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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioners,*

v.

FLORIDA POWER CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Gainesville Utilities Department and the City of Gainesville, Florida, Petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on May 1, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit (App. A, 1a-15a) is not yet reported. The main opinion and opinion on rehearing of the Federal Power Commission (App. B, 17a-44a, 44a-50a) are reported at 40 F.P.C. 1227 and 41 F.P.C. 4, respectively.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 1, 1970 (App. A, 16a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 313(b) of the Federal Power Act, 16 U.S.C. 825l(b).

STATUTE INVOLVED

The pertinent provisions of Section 202 of the Federal Power Act, 49 Stat. 487, as amended, 16 U.S.C. 824a are set out in Appendix C, 51a-52a.

QUESTION PRESENTED

1. Whether, in directing large interconnected electrict utilities to interconnect with small systems under Section 202(b) of the Federal Power Act, the Federal Power Commission must include, in the "compensation * * * reasonably due" to such large systems, an allowance for the benefits received by the small systems as a result of the interconnection as well as reimbursement for costs incurred.

STATEMENT OF THE CASE

This is the first fully litigated case presenting questions as to the terms and conditions to be prescribed with regard to interconnected operation of separately-owned electric systems having their own generating resources.

Pursuant to the complaint filed by Gainesville Utilities Department and the City of Gainesville, Florida,[1] the Federal Power Commission, by order issued under Section 202(b) of the Federal Power Act (App. C, 51a-52a) directed Florida Power Corporation, a "public utility" subject to Commission regulation under that Act, to establish physical connection with facilities of Gainesville, a municipally-owned electric system, and to sell to, and exchange energy with, Gainesville upon terms and conditions prescribed in that order. On appeal filed by Florida Power, the Court of Appeals affirmed the order of interconnection but set aside provisions as to compensation due to Florida Power on the ground that the Commission's failure to include therein an allowance for benefits received by Gainesville, as well as reimbursement for costs incurred, was based on incorrect and unsound policy. The pertinent facts, as shown in the record,[2] may be summarized as follows:[3]

Florida Power owns and operates a large bulk power system, valued at $500 million, which covers some 20,600 square miles in some 32 counties in west, northwest and central Florida, including Alachua County

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[1] Collectively referred to as Gainesville.

[2] The statistics in the record reflect operations for the year 1965 or, in some cases, 1966 (R. 354, fn. 1).

[3] Since the Petition does not take issue with the Court of Appeals' rulings (1) that Gainesville is a "person" entitled to seek relief under Section 202(b) and (2) that the Commission properly declined to require Gainesville to agree to a division of retail service areas as a condition to the interconnection, references to these matters, which occupied a substantial part of the attention of the Commission and the Court of Appeals, have been kept to a minimum.

in which Gainesville is located (R. 354).[4] In growing to this size, Florida Power absorbed 10 private and 16 municipal utilities (Tr. 173). It is now "actively seeking" to acquire additional municipal systems to which it sells wholesale power (Tr. 653).

Its generating plants have a total capability of 1595 megawatts[5] (mw) and it is installing a 525 mw unit for service in December 1969 (R. 354). Florida Power also is interconnected with 5 other major electric systems in Florida[5a] and with a Southern System company in Georgia[5b] (R. 354). By virtue of the above and its extensive company distribution facilities, Florida Power serves some 370,000 retail customers and supplies power at wholesale to 12 municipal distribution systems and 9 REA electric cooperatives (R. 354). Its peak load in 1966 was 1232 mw and was anticipated to reach 1826 mw by 1970, based on the 7 percent growth rate estimated by Florida Power (R. 354). As an interconnected utility, it can draw upon other companies for reserve capacity.

In contrast to Florida Power, Gainesville owns and operates an isolated electric generation, transmission, and distribution system valued at about $21 million, as of September 30, 1965 (R. 353-354). Gainesville's generating plant at that time had a total capability of 108.4 mw, of which only 58.4 mw could be considered

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[4] The distance between the northeast and southwest extremities of the area served by Florida Power is some 350 miles.

[5] A megawatt is the equivalent of 1,000 kilowatts (kw) or 1,000,000 watts.

[5a] Tampa Electric Company, Florida Power and Light Company, Orlando Utilities Commission, Gulf Power Company, and Jacksonville Electric Authority (R. 354).

[5b] Georgia Power Company.

firm since, as an isolated system, Gainesville's firm capacity is measured by its total capacity (108.4 mw) less its largest generating unit (50 mw) (R. 354). Gainesville's peak load in 1965 was 51.1 mw and its reserve capacity was 57.3 mw or 112.1% of peak demand (R. 354). Its peak is anticipated to reach 102 mw by 1970, based on its 15% growth rate (Ex. 57). Its load is doubling every five years, twice the national average.

All of Gainesville's operations are within Alachua County, Florida, where it competes with Florida Power.[6] In 1965, Gainesville sold some 202,000,000 kilowatt hours (kwh) of electricity at retail to some 17,000 customers in the County, both within and without the city limits (R. 354). The County's population is 90,000, of which 60,000 are within the city limits (R. 47). Florida Power's sales in the County were to five wholesale municipal and cooperative customers and some 3,700 retail customers (R. 49). Served out of Florida Power's Archer Road substation in Gainesville in 1965 were some 1,400 customers, to which Florida Power sold about 87,000,000 kwh for revenues of about $1,250,000 (Exh. 10). The largest part of these sales were to the University of Florida and Clay Electric Cooperative, an REA cooperative.

Since the demands on its system were growing at the rate of 15% annually, Gainesville found in 1964 that it would need additional capacity beginning in 1967 despite its large reserves. In order to deal with this problem, Gainesville in 1964 and 1965 sought to arrange an interconnection with Florida Power which

[6] For example, the University of Florida, located mostly within Gainesville's city limits, has four times shifted its purchases between Gainesville and Florida Power (R. 368).

would enable it, by sharing reserves or otherwise, to increase the firm capacity of its 1965 system without investing immediately in additional generating facilities. However, these efforts failed, and in November, 1965, Gainesville filed with the Commission an application for interconnection under Section 202(b) of the Federal Power Act, App. C, 51a-52a (R. 300-312b).[7]

Following extensive hearings, the Presiding Examiner issued his Initial Decision (R. 313-341), in which he required both utilities to interconnect and provide emergency services to each other up to the full 60 mw capacity of the interconnecting facilities. He found, *inter alia,* that (R. 321):

> "Witnesses for Gainesville, Florida Power and Staff are in agreement that the proposed interconnection is desirable and in the public interest * * *. If Gainesville were to maintain its isolated status it would be required to install duplicating additional generation of its own in order to assure its customers of firm service, although not without some curtailment because of reduction in frequency in the event of loss of its largest unit. Independent maintenance of sufficient installed capacity (fn. omitted) to carry peak-hour load in the event of an outage, to the extent of the loss of Gainesville's largest unit, would surfeit the area with capacity far in excess of the amount necessary at any one time, an obviously wasteful and uneconomic process."[8]

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[7] Gainesville subsequently installed three 15 mw gas turbine generators and is constructing an 81 mw fossil-fuel steam generator scheduled for 1972 operation.

[8] Despite this finding, however, the Examiner recommended that interconnection be ordered only upon the condition that the parties first agree to an elimination of duplicate facilities (R. 341).

In addition, while the Examiner declined, in fixing the schedule of charges to be made for services provided under the interconnection, to allow the $3.08 per kw per year demand charge pressed by Florida Power for emergency back-up service, he provided instead for a splitting of the operating benefits resulting from the interconnection (R. 333, 340).

In its Opinion and accompanying order here under review (App. B, 17a-44a, 44a-50a), the Commission found with regard to the interconnection itself (App. B, 22a):

> "* * * this record affirmatively shows that the proposed interconnection b e t w e e n [Florida Power] and Gainesville is desirable and in the public interest. Each system will gain financial and engineering benefits from the interconnection. The record also shows that the ordered interconnection will not place an undue burden upon Florida Power, will not require [Florida Power] to enlarge its generating facilities, and will not impair Florida Power's ability to render adequate service to its customers."

As to the claimed standby charge, i.e. for allegedly keeping facilities available to provide "instantaneous" emergency service, the Commission held (App. B, 29a):[9]

> "* * * the record in this proceeding does not establish any satisfactory justification for the im-

[9] With the exception of this claimed charge, the Commission adopted the Examiner's recommendations as to the compensation to be paid for services to be provided under the interconnection with minor changes not here relevant (App. B, 26a-27a). With reference to emergency service, the Commission provided (App. B, 41a):

> "(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be

> position of [the $3.08 per kw per year] * * * demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate."

In this regard, the Commission pointed out that "Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection" without any "direct cost to Florida Power" (App. B, 26a, 32a), and that compensation for services provided is to be determined by "the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive" (App. B, 29a-30a). However, the Commission noted (App. B, 30a):

> "If we were to appraise Florida Power's request for an annual standby charge in terms of a 'splitting of the benefits' test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits, and corporate financial savings." [10]

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treated as Inadvertent Energy Transfer * * *. Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service * * *.

"(g) Payments: Except for payments related to Economy Energy transaction, * * *, payments shall be as follows:

"(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

"(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation."

[10] The Commission's opinions elaborated upon these benefits (App. B, 30a-32a, 45a-47a) as discussed *infra* pp. 18-19.

Consequently, since the emergency service did not impose any firm obligation upon Florida Power (App. B, 28a, fn 4) and hence did not in fact subject Florida Power to any burden, the Commission found that there was no basis for the charge. Further, the Commission commented that not only would the Company's proposed charge "discourage future coordinated planning and operation" (App. B, 30a), but the Company had failed "to include a comparable charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected" (App. B, 31a).

On appeal, the Court of Appeals agreed that the interconnection "is 'necessary or appropriate in the public interest' and the interconnection will not put an 'undue burden * * * upon' the facilities of Florida Power or 'impair its ability to render adequate service to its customers' " (App. A, 13a). However, the Court held that the terms of the interconnection prescribed by the Commission "do not adequately satisfy the statutory requirements [fn. omitted] because they do not provide Florida Power with the 'reimbursement reasonably due' it" (App. A, 13a). In this regard, the Court accepted Florida Power's contention "that the Commission's policy of looking to the proportionate burdens that each system places upon the interconnected system networks instead of the benefits received as a result of the particular interconnection is inconsistent with the statutory authority to compel the interconnection" (App. A, 1a-2a) and further held (App. A, 15a):

> "The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large

> system, however, receives no benefits but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation."

Accordingly, the Court declined to "enforce" this portion of the Commission order and remanded the case to the Commission to provide "reasonable compensation" (App. A, 15a).

REASONS FOR GRANTING THE WRIT

1. This case presents a question, the proper resolution of which will have an important and far-reaching impact upon the Commission's ability to discharge its responsibility, under Section 202(a) of the Federal Power Act (App. C, 51a), "* * * of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources * * *."

According to the Commission's Natural Power Survey (1964), at pp. 267-268, there are over 3100 relatively small systems operating within the continental United States (excluding Alaska). While many of these systems are already interconnected with other and larger systems, there are nevertheless literally hundreds of such systems which are not so interconnected and operate in isolation, without any interconnection with any other system. For example, of the 137 municipal systems operating in Kansas in 1962, 60 generated their entire requirements and 55 of that 60 were completely isolated from any other electric system (Survey, p. 221).

Moreover, even where the small systems are interconnected with other and larger systems, the relation-

ships between the two systems are frequently very limited, and there is an absence of the cooperation necessary to achieve the benefits of full coordination. As repeatedly noted throughout the Survey (particularly p. 170, *et seq.*,), interconnection *and* full coordination are highly desirable and to be fostered at all levels and at every opportunity since they open the way for many and valuable benefits, not the least of which arise from reduced overall generating requirements and lower unit costs achievable in the planning and construction of new facilities. Indeed, "[p]articipation of the small systems in the benefits of coordination and a continuous search for means of broadening this participation are fundamental if these systems are to continue to provide low-cost power to their consumers and make the most efficient use of our fuel and capital resources." (Survey, p. 267)

In these circumstances, the court's rulings in this case obviously create obstacles to, and thereby discourage, meaningful interconnections and coordination—be they voluntary or Commission-directed under Section 202(b)—between small systems and large systems, as the Commission specifically pointed out with regard to the standby charge here sought by Florida Power (App. B, 30a). The decision would thus have a deterrent effect upon the Commission's efforts to foster expanded interconnection and coordination as a means of reducing the cost, and enhancing the reliability, of electric service.

The sanctioning of such a deterrent is especially to be avoided at this time, because of the developing shortages in electric capacity and the concomitant increasing threat of "brownouts" and possibly even "blackouts". It is also to be avoided because it is becoming increas-

ingly difficult and uneconomic for the smaller systems to continue to operate in isolation, and interconnection and coordination with other systems are virtually mandatory to assure their continued existence as viable entities. As the Commission stated in *Crisp County Power Commission* v. *Georgia Power Company,* F.P.C. , 67 P.U.R. 3d 75, 81 (1966):

> "The electric power industry is continuing its historic trend toward larger units in order to attain the economies inherent in large-scale production of energy. The industry also has accelerated the pace of its attempts to coordinate and to reduce reserve capacity in order to utilize more efficiently its capital investment and improve bulk power supply reliability. In this context, the disadvantages of small isolated systems which generate all of their own energy and rely upon their own limited resources, have become more evident and more critical with regard to the cost and reliability of service. The ever-widening gap that technology has created between large interconnected systems and isolated systems, in the economical use of capital and the efficient production of energy, threatens the survival of many small systems. Unless isolated systems can enter into coordination agreements with their larger interconnected neighbors, their outlook appears bleak, indeed."

2. In its dual rulings (1) that the "compensation * * * reasonably due" to a large system under Section 202(b) (App. C, 51a-52a) of the Federal Power Act must include an allowance for the benefits received by the small one, as well as reimbursement for costs incurred in connection therewith and (2) that interconnections under that Section benefit only the smaller systems with no benefits to large systems, the court below improperly injected its own views on a policy

issue whose resolution requires familiarity with the economics and technology of the electric power industry. In thus failing to defer to the policy espoused by the Commission and to evaluate the validity of that policy against a standard of reasonableness, the Court of Appeals flaunted the express language of Section 202(b), which clearly was intended to vest in the Commission the responsibility for determining the policy to be applied in formulating the terms of the interconnection as well as the terms themselves:

> "The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such orders, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

Respect for this Congressional mandate is particularly required because with any meaningful decision as to the appropriate policy having its roots in the complex economics and technology of the electric power industry, it is the Commission, not the Court, which is the expert in these matters by virtue of day-to-day exposure and experience as well as Congressional edict. See e.g., *Permian Basin Area Rate Cases,* 390 U.S. 747, 767 (1968); *Board of Trade of Kansas City* v. *United States,* 314 U.S. 534, 546-548 (1942); *National Broadcasting Co.* v. *United States,* 319 U.S. 190, 224 (1943); *Mulry* v. *Driver,* 366 F. 2d 544, 549-550 (9th Cir., 1966); cf. *United States* v. *Western Pacific R.R. Co.,* 352 U.S. 59 (1956); *Southwestern Sugar and Molasses Co., Inc.* v. *Rivers Terminals Corp.,* 360 U.S. 411 (1959).

3. The court's error in thus substituting its own views as to the appropriate policy to be applied for

those of the Commission is compounded by the fact that the views thus injected by the Court are themselves erroneous. By setting aside the Commission's order for failure to include in the compensation due Florida Power, an allowance for benefits received by Gainesville in addition to reimbursement for costs incurred by Florida Power, the court has in effect ruled that Section 202(b) contains a *mandate* requiring that the compensation provided include an allowance for these benefits.

Yet, it has long been established (1) that the Federal Power Act and its companion Natural Gas Act do not prescribe any specific method for determining just and reasonable rates and (2) that the Commission may properly use cost of service as a basis of determining such rates. See, e.g., *Permian Basin Area Rate Cases, supra,* at 767; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U.S. 591, 602 (1944). Indeed, where the Commission undertook to abandon cost completely in favor of value in fixing rates for pipeline produced gas, its order has been set side. *City of Detroit, Michigan* v. *Federal Power Commission,* 230 F. 2d, 810 (D.C. Cir. 1955), *cert. denied,* 352 U.S. 829 (1956).

To be sure, benefits are relevant in determining whether to require interconnection (cf. *Crisp County Power Commission* v. *Georgia Power Company,* F.P.C. , 67 P.U.R. 3d 75 (1966)), but that is different from the problem here at hand. The statutory standard for ordering interconnection under Section 202(b) is whether "such action is necessary or appropriate in the public interest" (see App. C, 51a); obviously the existence and magnitude of the net benefits resulting from the interconnection are highly relevant

under that standard. On the other hand, the provisions as to the payments to be made once the interconnection is ordered are governed by the entirely different language of Section 202(b) relating to the compensation set out *supra* p. 12.[11]

Nor is the court's error mitigated by its assertion (App. A, 14a):

> "* * * although there is no direct cost, Florida Power, really its customers will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection."

To the contrary, the assertion does not accord with the facts and conditions of the interconnection as directed by the Commission. Thus, all of the costs of accomplishing the interconnection are to be borne by Gainesville, and none of these costs are to be paid by Florida Power (App. B, 32a). Further, Florida Power is to be paid for all the emergency electricity provided by it to Gainesville in accordance with the schedule of payments prescribed by the Commission covering both investment and operating costs.[12]

Accordingly, any additional charge imposed would have to be for the cost of facilities kept available to

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[11] Evaluation of net benefits could also have been relevant in determining how the costs of the interconnection should be divided between the parties. However, there was no such problem in the instant case, since Gainesville proposed from the beginning to absorb all these costs.

[12] The schedule of charges prescribed by the Commission imposes a demand charge of $.05 per kw per day, in addition to the energy charge, if emergency service is provided for more than 60 minutes. See *supra*, p. 7, fn. 9. No issue has been raised with respect to these charges.

provide the service and, on this score, the Commission specifically took pains to emphasize (App. B, 28a, fn. 4) that its order imposes no obligation upon Florida Power to provide any specific firm service to Gainesville. Since this extends to emergency service, Florida Power's only obligation with regard to emergency service is to provide such service to Gainesville only when, as, and if available. Plainly, such an obligation does not require Florida Power to have facilities available at all times capable of supplying energy instantaneously with the onset of the emergency and hence does not impose the burden upon Florida Power envisioned by the court below.[13]

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[13] The reasons why emergency service as so limited is adequate for Gainesville's purposes are readily apparent to one familiar with the nature of the electric power industry in general and of the Gainesville-Florida Power situation in particular. On the one hand, if Gainesville ever needs emergency service, it would be only infrequently and then only during the summer when its peaks occur. If an outage of its largest unit were to occur at any other time, Gainesville would probably still have sufficient capacity of its own (including reserves) to carry its full load alone. It is only in the event of an outage of Gainesville's largest unit at the time of its summer peaks that Gainesville is likely to need emergency help from Florida Power; and, even then, its need would be below the capacity of that unit, since Gainesville has its own reserves which it could put into service.

On the other hand, Florida Power's peaks occur during the winter. Accordingly, since it sizes its capacity to meet these requirements in the *winter*, there can be little question but that absent an emergency on Florida Power's system, it will have excess capacity available in the *summer* sufficient to provide to Gainesville any emergency service it might need within a relatively short time.

This works the other way, also. Gainesville's reserves and seasonal diversity capacity will be available to Florida Power should it need help during its winter peaks. (See pp. 18-19, *infra*.) In addition, each system may draw on the other's reserve capacity any time of the year.

4. The error in the court's holding as to the need for an allowance for benefits bestowed is further aggravated by its related holding that the Commission's policy of proportionate utility responsibility

> "really works only one way. The small system receives high benefits and because of its size, no real obligations. The large system, however, receives no benefits but does incur real substantial responsibilities. Such imaginary equity is not reasonable compensation." (App. A, 15a.)

Not only does this reasoning consist solely of an *a priori* pronunciamento without any basis in the record or the actualities of the generation and distribution of electric power and energy generally, but it would sanction the imposition of a discriminatory charge upon Gainesville. None of Florida Power's voluntarily negotiated contracts with the other systems with which it is interconnected contain a comparable charge (App. B, 31a).[14]

Moreover, the court's reasoning does not accurately reflect the facts pertaining to the electric power industry. As the Commission noted in the comparable situation of a small system seeking interconnection with a large system involved in the *Crisp County Power* case, *supra,* at p. 82:

> "* * * there will often be situations where the smaller system can bring to the coordinated interconnection additional capacity and energy re-

[14] The two occasions in which Florida Power has contended that it has voluntarily negotiated financial payments with other systems to offset the lack of reciprocity, or mutuality of an interconnection, are beside the point. As shown in the Commission opinion on rehearing (App. B, 48a-49a), the situations there involved were very different from that of the instant case.

> sources at costs significantly lower than would otherwise be available, as well as adding to the reliability of the larger system."

Indeed, the court's reasoning is not even valid as it pertains to the Florida Power-Gainesville situation, as demonstrated by the specific findings of the Commission (App. B, 30a-32a, 45a-47a).

The fallacy in the court's generalization is its failure to appreciate that most large systems, such as Florida Power, do not consist entirely of units with capacities of 875 mw or even 500 mw, all in close proximity to the company's markets. To the contrary, large systems typically have many small units and their markets are spread over a wide geographical area. Obviously, a large system in such circumstances may well benefit substantially from interconnection with a smaller system, which is required to respond to local emergencies on the larger system.

In the instant situation, as the Commission found (App. B, 30a-32a, 45a-47a), interconnection with Gainesville can benefit Florida Power in a number of ways. For example,[15] Florida Power's generating units include "a small hydro plant of 8 mw; 7 old inefficient low pressure units with a combined maximum dependable output of 88 mw on cold standby used only to meet short-term winter peaks, with five units having a combined capacity of 65 mw to be added to cold standby by 1970 or 1971" (R. 315).[16] Consequently, Gainesville's ability, with its quick starting,

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[15] The illustrations in the text are confined to the more simple and obvious benefits in order to avoid getting enmeshed in the complexities of the generation and distribution of electric power and energy.

[16] Certain units in "cold standby" require some 8 to 12 hours before they are capable of generating power (R. 2075-2076).

highly reliable generating units (R. 35-38) to deliver anywhere from 60 mw to 100 mw to Florida Power during certain periods of the year obviously could be highly beneficial to Florida Power (App. B, 30a-31a, 46a).[17]

Again, the interconnection will make available an additional energy source and thereby improve the reliability of service furnished by Florida Power, in the Gainesville area where Florida Power has over a thousand customers but no generating plant of its own. Indeed, within the Alachua County area, Gainesville is the large system and Florida Power the small one. Thus, Gainesville's power plant is only 15 miles from Florida Power's Archer Substation and hence would be less exposed to lightning, storm or outage for other reasons than the energy sources used by Florida Power to serve that area. This is particularly so, since Florida Power's closest generating source is 75 transmission miles way; its next closest is 80 transmission miles away; and of the three energy sources connected to its load in the Gainesville area, two serve other loads and could be vulnerable to outage (App. B, 30a, 48a).[18]

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[17] Irrespective of the relative size of the two systems, the 60 mw capacity of the interconnection provides a ceiling upon the assistance each party can be to the other. Since, as indicated in the text, Gainesville is capable during certain periods of the year of making 60 mw available to Florida Power, its ability to help Florida Power is about equal to that of Florida Power to help it.

[18] The Commission's order does not impose any reserve requirements upon Florida Power corresponding to the reserve requirements imposed on Gainesville (App. B, 40a-43a). Not only has Florida Power provided fewer reserves than those required of Gainesville because of its interconnections with other members of the Florida Power pool, but under the practice of the industry, the loads and generating resources of Gainesville become integral components of Florida Power's loads and resources insofar as Florida Power's relation with its interconnecting utilities are concerned.

The attempt of the court below to brush aside these Commission findings as tentative only and hence as not "protected by the umbrella of the substantial evidence test" (App. A, 14a, fn. 20) misreads the Commission's opinions. The only thing tentative about these findings was not the findings *per se,* but their relevance in light of the Commission's policy relative to the determination of compensation (see App. B, 30a). As to the Commission's findings themselves, they are both firm and specific, as is readily apparent from the Commission's opinion on rehearing (App. B, 45a-48a), as well as its main opinion (App. B, 30a-32a).[19]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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July, 1970

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[19] Since this ground was not raised in Florida Power's application for rehearing, the court's ruling violates the principle prohibiting a court reviewing a Commission decision from considering grounds not raised on rehearing. Section 313(b) of the Federal Power Act, 16 U.S.C. 825l(b); *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission,* 324 U.S. 635, 649 (1945); *Federal Power Commission* v. *Colorado Interstate Gas Company,* 348 U.S. 492, 498 (1955).

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Appendix C—Pertinent Provisions of Federal Power Act

Section 202, 49 Stat. 487, as amended, 16 U.S.C. 824a 51a

APPENDIX A

1. Opinion of Court of Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27404

FLORIDA POWER CORPORATION, *Petitioner*,
v.
FEDERAL POWER COMMISSION, *Respondent*.

Petition for Review of an Order of the Federal Power Commission (Florida Case)

(May 1, 1970)

Before BROWN, Chief Judge, TUTTLE and MORGAN, Circuit Judges.

BROWN, Chief Judge: In this petition to review a Federal Power Commission order requiring the interconnection of the electrical transportation lines of the Florida Power Company with the distribution system of the City of Gainesville, Florida, primarily to secure emergency back-up power to overcome outages, two basic issues are presented. First, Florida Power contends that the Federal Power Act, 16 U.S.C.A. § 791 et seq., does not give the Commission jurisdiction to order a privately owned power company to interconnect its lines with those of a municipally owned system that both generates and distributes its own power. Second, the Commission's basic policy concerning the terms upon which an interconnection will be ordered is questioned.[1] Florida Power argues that

[1] Florida Power asserts that it should be compensated financially for providing the interconnection. By a subsidiary point it also argues that the City should be restricted in the areas in which it directly competes with Florida Power by duplication of facilities. We believe that the question of duplication of facilities is not directly related to this case and hold that the Commission was proper in refusing to condition the ordered interconnection of facilities on the elimination of this duplication.

the Commission's policy of looking to the proportionate burdens that each system places upon the interconnected system networks instead of the benefits received as a result of the particular interconnection is inconsistent with the statutory authority to compel the interconnection.[2]

We conclude that the Commission has jurisdiction to order this interconnection. We do not believe, however, that the Commission's order concerning the terms of this interconnection is consistent with the statute and thus we refuse enforcement of the order insofar as it fails to compensate Florida Power for making available large quantities of back-up power at the interconnection.

I.

A. The City of Gainesville System

The City of Gainesville owns an isolated electric generation, transmission, and distribution system that serves

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[2] Section 202(b) of the Federal Power Act, which grants the Commission authority to order interconnection, provides:

> "Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with any such persons: Provided, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

16 U.S.C.A. § 824a(b).

17,212 customers in the City and the adjacent areas. This system is projected to have a capacity of 138.4 mw[3] of generation in 1970 with its largest unit rated at 50 mw. The only transmission facilities operated by this system are a 115 kv[4] loop around the City and a 115 kv line to establish connection with Florida Power. The projected maximum peak hour demand (peak load) of the City's system in 1970 will be 102 mw.

B. Florida Power's System

In contrast to the small City of Gainesville system[5] Florida Power operates a major generation, transmission, and distribution system that serves 370,000 retail customers and supplies wholesale power to 12 municipal distribution systems and 9 REA cooperatives. It covers 20,600 square miles in West, Northwest, and Central Florida. During 1970 Florida Power will have 2114 mw of generation and projects a peak load of 1826 mw.

Florida Power's *massive* system operates through a backbone transmission network, and is connected with four major electrical systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Com-

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[3] A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

[4] A kilovolt (kv) is a large unit of electrical voltage used to rate transmission lines. Depending upon the size of the conductor a 115 kv line has a capacity of approximately 125 mw.

[5] The disparity in the sizes of the Gainesville and Florida Power systems and in the sizes of their electrical resources is striking and highly significant. These disparities in size are increasing each year as a result of the annual load growth on the Florida Power system being currently almost twice Gainesville's 1966 peak load and in excess of Gainesville's projected 1970 peak load of 102 mw. Gainesville's largest 50 mw generator is dwarfed by 8 generators on the Florida Power system and is about the equivalent of units that Florida Power uses only to meet peak load conditions and frequently are placed on cold shut-down.

pany, Orlando Utilities Commission and Jacksonville Electric Authority). It is also connected with Georgia Power Company and Gulf Power Company.

C. The Results of the Interconnection

Obtaining emergency reserves[6]—both instantly available and peak load installed capacity—in small isolated systems such as that operated by the City is a difficulty accentuated more by isolation than size. The only two solutions are the acquisition of additional generating capacity that will rarely be used and which is economically inefficient since a large portion of it must be kept in operation or "spinning" in order to provide the essential instantaneous reserve (see note 6, *supra*) or to end the system's isolation by connection with other systems that can provide the emergency reserve.

To acquire emergency reserve of 50 mw, the size of its largest generator, the City chose the latter solution and sought to achieve the desired interconnection through

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[6] Emergency backup service is providing the reserve of generation which a system must have to protect against inability to supply load in the event of a failure or outage of generation. Generally speaking, it is industry practice to have available a reserve of generating capacity at least equal to the capacity of a system's largest generator. To the extent emergency backup service is available from some other source, a system can reduce its installed reserve of generation. Generally speaking, it also is industry practice to protect against a failure or outage of a system's largest generator by operating at all times a reserve of generation (customarily referred to as spinning reserve) equal to the load being carried by the largest generator in operation. The operating reserve of generation, as distinguished from the installed reserve of generation, is called spinning reserve because it must be in operation and be instantaneously available. If the operating reserve of generation is not instantaneously available with a loss in frequency of less than one-half cycle per second—1/120th of a second—the system will suffer a frequency disturbance that can cascade, trip out other generating units, and shut down the entire system.

negotiation with Florida Power. When they were unable to come to terms, the City filed an "Application for Interconnection and Complaints Against Unlawful Actions"[7] with the Commission.

Pursuant to this application a hearing was held. The Presiding Examiner found that an interconnection was clearly in the public interest since the City would be relieved of the necessity of maintaining and adding to its present inordinately large and inefficient generating reserve. Under the terms of the recommended order Gainesville would have an additional reserve capacity equal to the size of its largest generator, would save approximately $300,000 per year[8] in investment and operating cost even after paying the cost of the interconnection,[9] and would have the reliability of a bulk power supply that it could have not previously achieved.

The Presiding Examiner found, however, that the benefits of the interconnection flowed in the direction of the City's system. Florida Power, because of the relatively small size of the City's generators, would receive no

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[7] The City's charges of unlawful activity relate to the direct competition between the City and Florida Power in rural Alachua County. See note 1, *supra*.

[8] The Presiding Examiner found that the savings would be "in excess of $300,000." The Commission staff submitted a study showing Gainesville would realize investment and operating savings from reduction of its installed reserve of generation averaging about $231,000 a year for the period of 1970 through 1979. Florida Power witnesses estimated these savings at $520,000 a year.

[9] The Commission and Presiding Examiner agreed that the City should bear the whole cost of building the physical facilities necessary for the interconnection. This will cost between $1,500,000 and $3,000,000 depending on the length of the transmission lines the City chooses to use.

significant additional reliability.[10] Because of the automatic nature of the interconnect, however, Florida Power will sell some power to the City in non-emergency situations, but these periods will be rare because the City has already built up large quantities of excess capacity that can be used to meet high demand periods. The Presiding Examiner recommended that, even though no additional facilities would be needed and there would be no undue burden on the Florida Power system, Florida Power should be compensated.

He recommended that no set demand charge be imposed on the City. Instead, he recommended that "the total operating benefits in dollars received by each party by reason of the interconnection be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference be made by the party receiving the greater benefit by reason thereof to the party less advantaged . . . ."

The Commission agreed that the interconnection was in the public interest. It concluded, however, that no compensation should be paid. Its decision was based on a policy of responsibilities which it phrased this way:

> "As a general proposition we note that whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their

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[10] The Presiding Examiner concluded that Gainsville could contribute only 6 mw, 3 mw, and 2.5 mw to Florida Power's system reliability. It seems clear that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages or more than 400 mw. Moreover, Florida Power's backbone transmission network has so many power sources more efficient and economical than Gainseville's small generators it is totally unrealistic to consider the City's system a significant power source.

respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network." [11]

Pursuant to that policy it concluded that payment for the energy actually used and the City's assumption of the cost of the interconnection adequately compensated Florida Power. As expected revenues from all types of services called for by the compulsory interconnect bear upon compensation, the order prescribed the rates, etc. for the three types of services set out in paragraph 7(d), (e)

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[11] City of Gainesville v. Florida Power Corp., 1966, — F.P.C. —, —.

and (f), which are not to provide instantaneous emergency reserves.[12]

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[12] The terms and conditions of the services are set out in paragraphs seven and eight of the order:

"(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spining and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfers: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph (7)(g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph (7)(d) above). Such service, if provided beyond the end

II.

Jurisdiction

Florida Power makes a frontal assault upon the Commission's action by a challenge to the Commission's au-

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of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph (7)(f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph (7)(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph (7)(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(8) Gainesville shall reimburse Florida Power for the annual cost associated with providing frequency regulation for its control area until such time as Gainesville installs tie-line bias control equipment in its own system and assumes responsibility for regulation of its own control areas. Florida Power is directed to submit to the Commission a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make the determination of the annual payment due from Gainesville to Florida Power after receiving the views and supporting calculations of each party."

thority to act upon the petition of a generating municipal system. The argument is that Section 202(b) of the Federal Power Act, 16 U.S.C.A. § 824a(b) (see note 2, *supra*), only authorized the Commission to compel a public utility to establish a physical connection with "one or more *persons* engaged in the transmission or sale of electric energy" (emphasis added). The argument then turns to section 3, the definitional section of the statute, 16 U.S.C.A. § 796,[13] and points out that "person" is defined as "an individual or a corporation" and then that section 3(3) defines "corporation" to expressly exclude municipalities. Florida Power also points out that Section 201(f), 16 U.S.C.A. § 824(f), specifically provides that no

> "provision in this Part [II, which includes Section 202(b)] shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing . . . unless such provision makes specific reference thereto."

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[13] "The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

* * *

(3) corporation means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include municipalities as hereinafter defined;

(4) person means an individual or a corporation

* * *

(7) municipality means a city, county, irrigation district, drainage or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power. . . .

16 U.S.C.A. § 796.

Despite the apparent cogency of the argument this use of the definitional section of the statute as a limitation on the scope of the Commission's jurisdiction has previously been rejected. In *United States* v. *Public Utilities Commission*, 1952, 345 U.S. 295, 73 S.Ct. 706, 97 L.Ed. 1020 the Court held that the definitional section did not limit the Commission's authority over rate regulation.[14] In addition, in *New England Power Co.* v. *FPC.*, 1 Cir., 1965, 349 F.2d 258 the First Circuit held that the definitional sections did not limit the power of the Commission to order an interconnection between a public utility and a nongenerating municipality.

Florida Power also argues that, independent of the language of the statute, the legislative history shows that generating municipalities were not "persons" for purposes of Section 202(b). This argument is more viable than the one limited to the language of the statute since

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[14] The Court relied heavily upon the legislative history to demonstrate that the definitional sections were not controlling. The Court said that it did not "find any evidence of conscious coordination of §§ 3(3), (4) and 201(d) from the legislative history. True, they were simultaneously enacted, and, in fact, the interpolation of the word 'person' into § 201 (d) occurred after the §§ 3 (3) and 3 (4) definitions were in existence in S 2796, 74th Cong., 1st Sess., as passed by the Senate and reported to the House, June 13, 1935. But this alteration came at the insistence of the House. The Senate had provided for jurisdiction over sales occurring before or after interstate transmission, id., § 201 (f), and the House amendment, from which § 201 (d) in its present form stemmed, covered sales during the transmission across state lines for the first time. So the House Report is, we think, significant in its redefinition of the section: A 'wholesale' transaction is defined to mean the sale of electric energy for resale. HR Rep. No. 1318, 74th Cong., 1st Sess., p. 8. We conclude, therefore, that the Congress attached no significance of substance to the addition of the word person, and in fact did not intend it as a limitation on Commission jurisdiction. Indeed quite the contrary was sought by the House amendment of § 201(d)."

345 U.S. at 313, 73 S.Ct. at —, 97 L.Ed. at 1036.

both the Supreme Court and the First Circuit specifically reserved the question of whether a "municipality which generates as well as distributes electricity is to be regarded as a 'person' under this section of the Act." *New England Power Co.* v. *F.P.C., supra,* 349 F.2d at 263. See also *United States* v. *Public Utilities Commission, supra,* 345 U.S. at 312-13, 73 S.Ct. at ——, 97 L.Ed. at 1036-37. Moreover, Florida Power's position seems to draw support from the statements of the principal draftsmen of the Act, Federal Power Commissioner Clyde L. Seavey and Mr. Dozier A. DeVane,[15] Solicitor for the Commission. And such statements may be powerful indicia of legislative intent and purpose. *Zuber* v. *Allen,* 1969, —— U.S. ——, ——, 90 S.Ct. ——, ——, 24 L.Ed.2d 345, 354.[16]

On closer examination, however, it is apparent that the statements of Commissioner Seavey and Solicitor DeVane refer only to the Commission's power to order public utilities to act as transporters of—"wheel"[17]—low cost government power to a government customer at

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[15] Later a United States District Judge.

[16] In *Zuber* the Court said: "It would be perverse to assume that congressional drafters, in eliminating ambiguity from the old act, were careless in listing their exceptions and selecting the illustrations from which the Committee Report from which their words would ultimately derive content." — U.S. —, — S.Ct. at —, 24 L.Ed.2d at 356. It should also be noted that the Supreme Court has previously used this testimony as an indication of legislative intent. In United States v. Public Utilities Comm., *supra,* the Court said that there "is evidence . . . that the exclusion of producing municipalities from Commission jurisdiction was intended. For instance, DeVane, Solicitor of the Federal Power Commission at the time, testified as follows before the Senate Committee . . . [excerpts from testimony]".

[17] Wheeling is where A, which has excess generating capacity, seeks to transmit power to its customer C with whom it has no transmission connection, by using the transmission facilities of B, which has connections with both A and C.

the expense of a privately owned company. See, e.g., *Hearings Before the Committee on Interstate and Foreign Commerce*, House of Representatives, on H.R. 5423, 74th Cong., 1st Sess. (1935), 394, 395, 397, 532, 546, 559, 564; *Hearings Before the Committee on Interstate Commerce*, Senate, on S. 1725, 74th Cong., 1st Sess. (1935), 257, 260, 271. And, although there are general statements by them that do not necessarily refer to "wheeling" see e.g., Senate Hearings, *supra* at 256, after close examination of the entire legislative history we can find no support for the conclusion that municipalities which generate their own power were to be treated differently from nongenerating municipalities concerning anything other than "wheeling".[18]

III.

The Terms of the Ordered Interconnection

Even though the Commission has jurisdiction to order this interconnection and even though the connection is "necessary or appropriate in the public interest" and the interconnection will not put an "undue burden . . . upon" the facilities of Florida Power or "impair its ability to render adequate service to its customers", the terms of the interconnection do not adequately satisfy the statutory requirements[19] because they do not provide Florida Power with the "reimbursement reasonably due" it. See 16 U.S.C.A. § 824a(b), (see note 2, *supra*). This interconnection will be of substantial benefit only to the City.

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[18] From the legislative history cited by the Court in the *California Utilities* case, *supra*, it is apparent that when it specifically reserved the question of generating municipalities it was referring to the problem of "wheeling". See United States v. Public Utilities Commission, 345 U.S. at 312-13, 73 S.Ct. at —, 97 L.Ed. at 1036-37.

[19] Although Florida Power makes a constitutional attack upon the Commission's action, we find it unnecessary to pass upon the questions raised.

Through the interconnection it receives essential emergency back-up, which is a service at all times instantaneously available, and which protects it against the outage of the largest of its generators. (See IC, *supra*). The benefits to Florida Power, however, are largely illusory.[20]

But, although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection. And this burden will be reflected in their cost-based rates. They are entitled to not have to carry

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[20] The Commission indicated that it believed Florida Power would receive certain vague but substantial benefits as a result of the interconnection. These vague benefits were (i) possible deferral of future generating units because of coordinate planning of new facilities, (ii) the electrical operating benefits from the availability of the City's small power contribution, and (iii) the possibility of additional reliability from the City's contribution since Florida Power does not have generators in the immediate area (see note 10, *supra*). But these benefits are unrealistic as well as vague. Florida Power's largest present unit has a 527 mw capacity and a 875 mw unit is scheduled to be in operation in 1972. Obviously, any savings from coordinated planning with a system with the largest generator with only a 50 mw capacity are highly theoretical. And the Commission did not even suggest how the interconnection with the City was to contribute operational savings and reliability (reliability is the most unrealistic of all, see note 10, *supra*) to Florida Power.

The Commission's conclusions were, however, tentative as well as vague and unrealistic—"If we were to appraise Florida Power's request for an annual standby charge in terms of 'splitting of the benefits' test . . ."—and are not fact-findings protected by the umbrella of the substantial evidence test. As Mr. Justice Frankfurter said in SEC v. Chenery Corp., 1943, 318 U.S. 80, 93, 94, 63 S.Ct. 454, —, 87 L.Ed. 628, 636, "Its action must be measured by what the Commission did, not what it might have done". See Schaffer Transportation Co. v. United States, 1957, 355 U.S. 83, 78 S.Ct. 173, 2 L.Ed.2d 117; 2 K. Davis, Administrative Law Treatise §§ 16.05, 16.09 (1958).

the entire responsibility for providing an extremely valuable service.

The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation.

Thus we deny enforcement of this order insofar as no provision for the reasonable compensation of Florida Power is made. The remainder of the order, however, is enforced, and compliance need not be delayed until the amount Florida Power is to be paid is determined by the Commission and that determination reviewed.

But in sending this case back to the Commission for it to fix a formula for computing what would be reasonable compensation, we do not even whisper what that formula should be. On reconsideration the Commission may determine that the set demand charge requested by Florida Power is a reasonable formula. It may determine that the 50 percent-of-the-difference-in-benefits formula of the Presiding Examiner is more appropriate. It may decide to use parts of both, neither formula, or a completely different formula. This is for the Commission subject to later review.

ENFORCEMENT GRANTED IN PART AND DENIED IN PART.

2. Judgment of Court of Appeals

JUDGMENT

This cause came to be heard on the petition of Florida Power Corporation, for review of an order of the Federal Power Commission in Docket No. E-7257, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the order of the Federal Power Commission in this cause be, and the same is hereby enforced in part and denied in part, in accordance with the opinion of this Court.

It is further ordered that petitioner pay two-thirds (⅔) of the costs on appeal in this Court and that respondent pay one-third (⅓) of said costs.

May 1, 1970

APPENDIX B

1. Main Opinion of Federal Power Commission

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge, and John A. Carver, Jr.

Docket No. E-7257

GAINESVILLE UTILITIES DEPARTMENT

and

CITY OF GAINESVILLE, FLORIDA

v.

FLORIDA POWER CORPORATION

Opinion No. 550

OPINION AND ORDER DIRECTING PHYSICAL INTERCONNECTION OF TRANSMISSION FACILITIES AND PRESCRIBING TERMS AND CONDITIONS THEREOF

(Issued November 5, 1968)

O'CONNOR, Commissioner:

This proceeding arises out of an Application for Interconnection and Complaint Against Unlawful Actions filed under the Federal Power Act on November 22, 1965, by the Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville or City). Gainesville requests (1) an order under Section 202(b) of the Act directing Florida Power Corporation (Florida Power or Corporation or Company) to establish a physical interconnection with Gainesville, and to sell and exchange energy with Gainesville; (2) an order re-

quiring Florida Power to cease certain practices which allegedly discriminate against Gainesville and violate Sections 205 and 206 of the Act; and (3) an order requiring Florida Power to desist from certain actions which allegedly are in restraint of trade and violate Section 10 of the Act.

Florida Power filed a motion to dismiss Gainesville's application and complaint, alleging lack of jurisdiction. Florida Power also filed an answer to such complaint. On April 19, 1966, the Commission directed a hearing on the issues raised by the parties. Hearings were held at various times between November 16, 1966, and March 16, 1967, at Gainesville, Florida, at St. Petersburg, Florida, and at Washington, D. C.

On January 17, 1968, the Presiding Examiner, Martin E. Rendelman, issued an initial decision in which he (1) denied Florida Power's motions to dismiss; (2) ordered a connection between Florida Power and Gainesville, subject to the condition that the parties first negotiate an agreement to eliminate and avoid all duplication of facilities; (3) prescribed the terms and conditions covering the sale and exchange of electric energy; (4) found that an order for interconnection renders moot Gainesville's complaint that Florida Power is violating Sections 205 and 206 of the Act; and (5) found that the evidence does not establish the alleged violations by Florida Power of Section 10 of the Act.

This proceeding is before the Commission on the examiner's decision, exceptions filed by Gainesville, Florida Power, and staff, and oppositions to such exceptions filed by the respective parties. Oral argument was held before the Commission on July 9, 1968. The basic issues involve (1) the jurisdictional question; (2) the conditioning of the interconnection order; and (3) the prescription of rates of payment between the parties.

Holding

For the reasons set forth below we find that the examiner was warranted in denying Florida Power's motions to dismiss and in ordering the interconnection. We further find that the order for interconnection should not be qualified by the pre-condition prescribed by the examiner, and that certain changes are appropriate in the rates proposed by the examiner.

Background

The City of Gainesville owns an isolated electric generation, transmission, and distribution system, valued at $21,104,036,[1] which is operated by the Gainesville Utilities Department. This system serves 17,212 retail customers in a 22 square mile area covering the City and adjacent portions of Alachua County, Florida. In 1965 Gainesville's generating plant had a total capability of 108.4 mw as against a peak load of 51.1 mw. The system's reserve capacity was 57.3 mw or 112.1 percent of peak demand. Gainesville anticipates a peak load of 102 mw by 1970.

Florida Power is a "public utility" subject to the jurisdiction of the Commission. Its system, currently valued at $500,000,000, includes substantial generation, transmission, and distribution facilities. Florida Power is interconnected with and operates in parallel with the Interconnected Systems Group and with the Florida Power & Light Company, Tampa Electric Company, Orlando Utilities Commission, and the City of Jacksonville. Florida Power presently serves 370,000 retail customers, and it supplies power at wholesale to 12 municipal distribution systems and to nine REA cooperatives. Florida Power's service area covers 20,600 square miles in west, northwest,

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[1] Unless otherwise stated, the statistics in this opinion usually reflect operations for the year 1965 or in some cases 1966, as set forth in the evidence of record in this proceeding.

and central Florida, and includes Alachua County as well as 31 other counties.

Florida Power's generating plants have a capability of 1595 mw. Peak load for the system was 1232 mw in 1966. The Corporation is installing a 525 mw unit for service in December 1969, and it is planning to install a 875 mw nuclear-fueled unit for service in mid-1972. Florida Power estimates its annual growth rate is about seven percent or currently 100 mw per year, and it anticipates a peak load of 1826 mw for 1970.

Gainesville's Proposal for Interconnection

Gainesville proposes to establish a physical connection with Florida Power's transmission system by constructing a 115 kv line to the Corporation's Archer Substation on Florida Power's 230 kv line from Fort White to Silver Springs, Florida. Gainesville proposes to install a 230/115 kv step-down transformer with a capacity of 36/60 mva, or, as recommended by staff, of 60 mva. The cost of this installation, including transmission line, transformer, and related equipment, is estimated at $1,500,000 if seven miles of 115 kv line are required, and at double this amount if 14 miles of 115 kv line are constructed all the way to Gainesville's own generating plants. Gainesville plans that the interconnection will be operated closed at all times except when opening is required for safety, maintenance, or repairs.

Gainesville contends that the interconnection will be in the public interest because it will enable the two systems to exchange economy energy, pool their reserves, exchange capacity, and coordinate construction of generation at substantial financial savings to both; that it will place no undue burden upon Florida Power; and that it will not require Florida Power to enlarge its generating facilities. Florida Power, on the other hand, asserts that the Commission is without jurisdiction to act on Gainesville's appli-

cation, but it adds, without waiving its legal position, that it will be agreeable to a voluntary connection under conditions which will safeguard its service area, protect it from wasteful competition, and assure payment of reasonable compensation for its services. As of this date, Gainesville and Florida Power have not been able to reach an agreement on the conditions proposed by Florida Power.

The Question of Jurisdiction

Florida Power maintains that Gainesville, as a municipal corporation, is not a person within the meaning of Section 202(b) of the Act, and that the Commission therefore has no authority to order the proposed interconnection. We find no merit in this argument which plainly is based upon an incorrect interpretation of the meaning of Section 202 (b). Florida Power's contention is similar to arguments which were previously raised and were rejected by us in *Shrewsbury Municipal Light Department* v. *New England Power Co.*, Opinion No. 438, 32 FPC 373, (1964), *affirmed, sub. nom., New England Power Co.* v. *Federal Power Commission*, 349 F. 2d 258 (CA 1, 1965); *Crisp County Power Commission*, v. *Georgia Power Company*, Docket No. E-7120, Tentative Opinion No. 508 (1966); *City of Paris, Kentucky* v. *Kentucky Utilities Co.*, Opinion No. 525 (1967), remanded on other grounds in *City of Paris* v. *Federal Power Commission*, — F. 2d — (CADC, July 3, 1968). The examiner correctly denied Florida Power's motion to dismiss.

The Basis for Interconnection

The statutory provisions which govern this proceeding are those set forth in Section 202(b) of the Federal Power Act. This section provides that the Commission may order an interconnection when it finds that such action is necessary or appropriate in the public interest, and when it also finds that no undue burden will be placed upon the public utility affected by the order. The Commission's authority

is specifically limited by two qualifications: (1) it shall not compel the enlargement of generating facilities for the purpose of the interconnection order; and (2) it shall not compel the affected public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

Applying these standards, this record affirmatively shows that the proposed interconnection between Corporation and Gainesville is desirable and in the public interest. Each system will gain financial and engineering benefits from the interconnection. The record also shows that the ordered interconnection will not place an undue burden upon Florida Power, will not require the Corporation to enlarge its generating facilities, and will not impair Florida Power's ability to render adequate service to its customers. Our reasons are set forth in detail hereafter.

In addressing them we deem it important at the outset to emphasize a basic distinction which was not articulated by the Examiner but is central to our analysis. We refer to the initial step of evaluating the electrical resources to be operated under interconnected conditions and as a part of that process to distinguish those factors which involve system electric reliability or the capacity to serve, from marketing or pricing policies which a utility may adopt in selling electric power and energy in bulk at the wholesale level. These differing considerations tend to be obscured in the opposing economic arguments advanced by Florida Power and Gainesville with respect to their proposed terms and conditions for operating in parallel. Hence, the restatement of the specific contentions of the parties, without more, creates difficulty in understanding the resolution which we make of one of the major disputes in this case: Florida Power's request for a standby charge to Gainesville equal to $3.08 times the installed capacity of the City's largest generating unit. As a part of our overall assessment of the benefits and responsibilities of Gainesville and Florida Power in operating under inter-

connected conditions, we have evaluated their respective electrical resources, including the generating units of both and the effect of adding Gainesville as an additional point of connection upon Florida Power's system.

As a general proposition we note that whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network.

Here the City and Corporation agree that an electrical interconnection should be established. Their basic differences reflect a series of economic and financial considerations; chiefly, what operating responsibilities each should bear, and what charges should be assigned to each system.

Uses of the Proposed Interconnection

All parties agree that the contemplated interconnection would be used initially as follows: for purposes of sharing

generating reserves between Florida Power and Gainesville; to facilitate the exchange of hourly non-firm economy energy transfers between the two systems; for weekly or other short term purchases of electrical capacity and related energy by the Corporation or the City; to permit either system to supply to the other replacement energy during periods of scheduled outage for equipment maintenance purposes; and to meet system electric needs during emergency outages of operating equipment of the City or Florida Power.

The degree to which these various types of service will be utilized by either party is a matter for decison by personnel of Florida Power and Gainesville. Electrical flows between the systems to complete economy energy transactions, short term sales of electric capacity and related energy, maintenance replacement energy and emergency service will be controlled by the system dispatchers.

In addition to scheduled transfers between Florida Power and Gainesville, there will be non-scheduled or inadvertent flows through the proposed interconnection. These flows will be instantaneous and occur as generating sources and connected electric loads shift. Depending upon the originating cause they may be in the direction of Florida Power or in the direction of Gainesville.[2] As in the case of scheduled flows, the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either

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[2] Flows in either direction may reflect occurrences on the Florida Power or Gainesville systems, the systems of other members of the Florida Operating Committee with which the Corporation interconnects, or the systems of utilities operating outside the State of Florida which are electrically connected with Florida Power. Presently, approximately 94 percent of the total installed generating capacity of the Nation's electric utilities is interconnected and operates in electrical synchronism, including members of the Florida Operating Committee.

direction is the electrical capacity of the facilities to be installed between the Company and City, 60,000 kva.[3]

Uses of System Generating and Transmission Facilities

Under the terms and conditions of the interconnection as specified in this opinion and order, each system (Florida Power and Gainesville), will be responsible for its own generating capacity and reserve requirements.

We accept and approve the Examiner's conclusion as to the installed and operating reserves of Gainesville and Florida Power. As expressed in this opinion, we are satisfied that an appropriate basis has been shown for evaluating Gainesville's generating resources and for assigning to the City a reserve responsibility. Briefly, they are those requirements which apply to Florida Power as a member of the Florida Operating Committee, and those which the Corporation applies to itself by reason of its utility operating practices.

As set forth in finding (7) (a), Gainesville is required to own or secure from others generating capacity equal to or greater than 115 percent of the City's estimated annual peak hour demand. Under finding (7) (c), Gainesville must maintain ready reserves up to a limit of 15 percent of the City's estimated annual peak hour demand and up to a limit of 10 percent of that demand for spinning reserves.

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[3] Various briefs of Florida Power denominate these inadvertent transfers as instantaneous emergency service. They are urged as a principal justification for the Corporation's requested "standby charge" of $3.08/kw up to the capacity of the City's largest generating unit. Gainesville does not seek to apply any such charge against the Company. Florida Power does not assess a similar charge against any other system with which it interconnects, nor does any other member of the Florida Operating Committee. Indeed, the staffs review of pooling agreements and bilateral arrangements between large and small systems described in the record did not reveal any other example of such a charge.

In the light of current reserve practices being followed by Florida Power and other members of the Florida Operating Committee, these requirements will insure that Gainesville discharges its utility service obligations to provide sufficient generating capacity and resources, installed and operating, to supply the needs of its utility consumers.

Following completion of the proposed interconnection, Gainesville's transmission facilities (principally the 115 kv line to be constructed from the City's existing circuits to the point of interconnection at Florida Power's Archer Substation) will function as a means of interconnecting the City's system with that of Florida Power. Florida Power's transmission network functions, and will continue to function, as a means of interconnecting the Corporation's own generating, purchased power and interchange sources and for delivering power to the Corporation's load centers. After connection, Gainesville will become an additional interchange power source on that network.

Compensation

Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection. There will be no direct facilities cost to Florida Power. Depending upon final construction plans, the City's capital costs for this purpose will be in the order of $3,000,000. This investment will be required for about 15 miles of 115 kv transmission from Florida Power's Archer Substation to the City's generating station including transformation facilities at both ends.

Insofar as the proposed interconnection is used for economy energy, maintenance replacement energy and emergency service, we adopt the types of compensations (financial payment or return in kind) to Gainesville and Florida Power as set forth in the Examiner's decision and findings (7)(b), (d), (e) and (g) (1) below. The parties do not object to the Examiner's decision in these respects.

Gainesville and Florida Power both filed exceptions to the Examiner's finding in paragraphs (7)(f) and (7)(g) that scheduled electric service shall be paid for at the rate of $.08 per kw per day. Gainesville maintains that the rate should be $.05 per kw per day for both parties. Florida Power states that it is willing to sell to Gainesville at the rate of $.05 per kw per day, but it contends that it should pay Gainesville less than $.05 per kw per day because Gainesville's total fixed charges are lower on a percentage basis than Florida Power's. Upon the showing of this record, we find that the rate of $.05 per kw per day is appropriate for both parties.

We note that one responsibility of interconnected operation has not been specifically mentioned in the examiner's initial decision. Florida Power and the other members of the Florida Operating Committee each incur annual costs associated with providing frequency regulation for its own control area. Until such time as Gainesville installs an interconnection with another member of the Florida Operating Committee, Gainesville will be within the control area of Florida Power. Staff testified that it would be appropriate for Gainesville to make an annual payment to Florida Power which would represent its proportionate contribution toward Florida Power's annual costs for providviding regulation in the control area and that such annual payment should be terminated when Gainesville installs tie-line bias control equipment in its own system and thereby assumes responsibility for regulation of its own control area. We agree. Accordingly, Florida Power will be directed to submit a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make its own determination of such annual payment after receiving the views and supporting calculations of each party.

These charges for services, of which either party may avail itself,[4] will adequately compensate both Florida Power and Gainesville in providing the services. The reserve capacity which we are requiring Gainesville to maintain will assure that Gainesville does not unduly burden Florida Power. The record in this case demonstrates that Gainesville will place no disproportionate burden or reliance on the facilities of the Corporation and thus should not be penalized either in terms of greater reserve capacity requirement than that carried by the other systems in the coordinating area or in terms of a demand charge.

The Standby Charge

Under present conditions Florida Power's request for a standby charge would impose an annual payment approximating $150,000 upon Gainesville. The Examiner rejected Florida Power's recommendation and in lieu thereof proposed that the total operating benefits in dollars received by each party by reason of the interconnection shall be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference shall be made by the party receiving the greater benefit to the party receiving the lesser benefit.

Florida Power excepted to the failure of the Examiner to approve its request for a demand charge of $3.08 per kw per year, multiplied by the 50,000 kw capability of Gainesville's largest generator, but generally found the Examiner's 50-50 split proposal satisfactory, provided that the parties could overcome the administrative difficulties expected to be encountered in computing the annual savings in dollars. Gainesville and staff, on the other hand, filed exceptions to the Examiner's proposed 50-50 split of bene-

[4] We emphasize that in this particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other.

fits. Gainesville argued that such a procedure would be too vague and general even when applied only to the so-called "operating benefits", and in any event could not be applied to all of the types of benefits possible. Staff contended further that the Examiner's proposal was unwarranted and inappropriate; that such proposal could not be justified as a substitute for Florida Power's emergency demand charge; that the difference in operating benefits to the parties from the interconnection would not be sufficient to warrant the condition; and that the proposal was not consistent with prevailing industry practice.

We agree with Gainesville and with staff that the record in this proceeding does not establish any satisfactory justification for the imposition of a per kw demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate.

The reasoning of both Florida Power and the Examiner is inconsistent with what we have determined to be the appropriate analysis of the basic issues here presented: sharing the responsibilities of interconnected operations. As we have explained, that sharing must be based upon, and follow, the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive. Benefits received in any given situation may approximate these responsibilities or they may not. In the course of negotiation of voluntary pooling arrangements, benefits received may, on occasion, serve to offset burdens imposed in determining the appropriate charge for particular services rendered or facilities supplied. But where, as here, the cost of providing such services and facilities and the appropriate charges therefor have equitably been determined after a careful analysis and apportionment of the burdens and responsibilities of each party, there is no basis for any further consideration of relative benefits as proposed by the Examiner.

The evidence before us shows that Gainesville will be contributing its proportionate share of instantaneous emergency service and installed generating capacity, including reserve capacity.

Moreover, the specific type of demand charge requested by Florida Power, namely, the imposition of a charge based upon the size of Gainesville's largest generating unit, would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units. Without such a demand charge, Gainesville could participate more fully in coordinated planning including staggered construction with Florida Power and other systems in Florida to the mutual benefit of all such systems.

If we were to appraise Florida Power's request for an annual standby charge in terms of a "splitting of the benefits" test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits and corporate financial savings.

The financial benefits are those which could result from coordinated planning and more intensive utilization of existing generating resources. Savings from coordinated planning of new facilities might involve deferral of future generating units or revisions in power supply contracts with other systems. As to the electrical operating benefits, this record shows that the City will have an additional 60,000 KVA energy source continuously connected to the City's distribution circuits. For the Company, the interconnection will add an additional energy source to its network in a geographic area where the Company has a substantial load (customer demands), but does not have generating plants of its own. Because of that, the expected benefit to Florida Power may be very substantial since the governors have a faster rate of response setting than Florida Power's. Also of great importance to Florida

Power is the improved system reliability which the Company will gain through the proposed intertie. That is shown in studies submitted by staff from engineering analyses of loss of load probabilities. They establish that the interconnection will have the effect of improving the reliability of Florida Power's system.

Turning to the particular facts which comprise Florida Power's principal justification for its $3.08/kw standby charge, this record shows a unit cost calculation based upon an assumed use of the Corporation's transmision network for service reliability and emergency back-up service and an assumed use for bulk power deliveries to the Corporation's own utility load centers. The Corporation estimates that its gross investment in its transmission network will total $65,000,000 as of 1970, and that 60 percent of this amount or $39,000,000 should be allocated to system reliability and emergency back-up service. It calculates the annual fixed charges on this $39,000,000 at $5,850,000. It states that Gainesville's proportionate share of such annual charges, at the rate of 15 percent of allocated investment, and assuming a combined load for the two companies of 1,900 mw in 1970, will be $3.08 per kw.

Florida Power's proposed additional standby charge for transmission availability (amounting to $150,000 per year), must be evaluated against the background of its failure to include a comparable charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected. In these circumstances, Florida Power plainly bears the burden of justifying an apparently discriminatory imposition in this one instance. The evidence falls far short of meeting this burden. The Corporation's allocation of 60 percent of its transmission system investment to service reliability and emergency back-up service is not supported by any engineering analysis as to its appropriateness. This allocation is, in fact, disputed by staff which claims that Florida Power failed to give adequate con-

sideration to certain advantages which the Corporation enjoys from its transmission system such as bulk energy deliveries, and the savings resulting from reduced capacity and energy costs made possible by the installation of larger generating units and by the maintenance of lower reserve requirements. Furthermore, Florida Power did not adduce any operating or engineering facts to establish that Gainesville derives any special operating benefit by reason of Florida Power's interconnecting transmission network apart from that gained by any individual system which is tied into an interconnected network. The affirmative showing of the record in this proceeding is that the proposed interconnection will provide important instantaneous emergency service to Florida Power from Gainesville.

Insofar as Florida Power's investment in its transmission system is concerned, we deem it appropriate to point out that the proposed interconnection will be accomplished at no direct cost to Florida Power. The cost to Gainesville, on the other hand, will approximate $3,000,000.

The Examiner's Condition for Interconnection

A competitive situation exists between Gainesville and Florida Power for customers in the Gainesville area. Gainesville also competes with Clay Electric Cooperative (Clay Electric). During the hearings evidence was submitted showing that since 1962 Gainesville has expanded its service into areas served by Florida Power and by Clay Electric, first by the annexation of adjacent territory to treble the size of the City, and second by the extension of its distribution lines beyond its new city limits into Alachua County. Gainesville negotiated a settlement with Clay Electric whereby it acquired the latter's facilities and customers within the annexed area, but it did not negotiate a similar agreement with Florida Power, and that Corporation continues to serve 22 of its customers within the new city limits. Florida Power also provides retail service to the University of Florida at Gainesville, and is now under

contract to continue such service until 1976.[5] Gainesville's extended distribution lines in certain instances duplicate and parallel those of Florida Power and Clay Electric. Prior to the hearings Gainesville constructed 16.2 miles of such duplicating lines at a cost of $165,000, resulting in annual fixed costs and operating expenses of $16,550.

Florida Power and Gainesville accuse each other of engaging in a wasteful duplication of service. On September 14, 1967, Florida Power petitioned the examiner to reopen the proceeding for the purpose of submitting additional evidence showing that Gainesville was intensifying its competitive efforts. The examiner denied the petition to reopen, stating that the allegations were cumulative to facts already in the record. Subsequently, on July 8, 1968, Florida Power petitioned the Commission to reopen the proceeding for the purpose of taking additional evidence showing that since the conclusion of the hearing, Gainesville has constructed approximately 19 miles of distribution lines paralleling and duplicating those of Florida Power, that these lines will serve approximately 35 new customers, chiefly residential and commercial users in new buildings under construction, and that Gainesville has also purchased the Westward Utilities, Inc., a private utility which formerly provided water and sewerage services to electric customers of Florida Power. For the reasons set forth below we are of the opinion that Florida Power's petition of July 8, 1968, does not set forth grounds which warrant the reopening of this proceeding.

Florida Power argued before the examiner that it should not be compelled to interconnect with Gainesville under circumstances whereby the advantages which Gainesville

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[5] The University of Florida was served by Gainesville prior to 1930. It was served by Florida Power from 1930 to 1935, and again by Gainesville from 1935 to 1948. In 1948 Gainesville advised the University that it could no longer serve it, and the University then resumed service from Florida Power.

would obtain from the interconnection could be used by Gainesville to assist it in continuing its competition against Florida Power. The examiner accepted Florida Power's argument to the extent that he found it to be in the public interest that the order for interconnection should be qualified by a condition precedent compelling the parties first to reach an agreement whereby the further duplication of facilities will be avoided.

Gainesville and staff filed exceptions to the examiner's condition. They assert that the imposition of the condition is tantamount to a denial of the interconnection because Florida Power will be placed in a position to insist upon territorial limitations which Gainesville will not accept. Gainesville and staff maintain that the benefits from the interconnection will far outweigh any possible detriment resulting from competition at the retail level, and they contend that the question of a territorial agreement should be left for future resolution by the parties after an interconnection has been accomplished. Staff further points out that the interconnection may readily provide the mechanism for decreasing the duplication of distribution facilities of the parties, whereas the continued electrical isolation of Gainesville will compel the City to plan and build larger generating units than it can utilize at all times to capacity, thus forcing it into more aggressive competition for new customers.

Florida Power generally supports the examiner's condition and states that under Florida law it is not expected to serve a competitor. Florida Power adds that it is willing to interconnect voluntarily with Gainesville and to sell and exchange capacity and energy on terms and conditions substantially in accord with those set forth in the examiner's additional findings and conclusions. It proposes a territorial agreement with Gainesville whereby it will turn over to Gainesville 22 residential customers and an ice plant now served by it within the City, and it offers to withdraw its service from any suburban area where Gainesville had con-

structed parallel distribution facilities as of the time of the hearings. Florida Power intends to continue its service to the University of Florida, and it asks that Gainesville respect the integrity of its revised service area for a period of 15 years.

In presenting their cases on this point Gainesville and Florida Power have relied extensively on decisions rendered by state and federal courts in related and separate areas of law. Notwithstanding such reliance upon precedent in the fields of state utility law, railroad law, and antitrust law, the standards which control are those set forth in Section 202(b) of the Act, which we discussed above.

The Commission is of the view that the competition between Gainesville and Florida Power, although understandably a matter of some annoyance to Florida Power is not currently of major importance. The record before us does not show that this competition, either at the present time or in the near foreseeable future, will impose any undue burden upon Florida Power, nor will it impair the stability or prosperity of Florida Power's $500,000,000 system. We find merit in staff's view that the interconnection may provide the opening mechanism for a program of cooperation between Gainesville and Florida Power, a program which eventually may enable the two systems to reconcile their differences and accomplish the elimination of wasteful duplication. We are also persuaded by staff's argument that the continued isolation of Gainesville will lead only to more aggressive competition on its part.

The foregoing discussion leads us to conclude that the public interest will not be served by the attachment of a condition precedent to an order for interconnection which may prevent the interconnection from being accomplished. The examiner's condition involves the undesirable risk that it can be self-defeating in that it may enable the intransigence of the parties, who thus far have not been able to reach an agreement on this matter, to prevent the intercon-

nection from being consummated. The issue of overriding significance here is that it is in the public interest that the electrical isolation of Gainesville be ended as quickly as possible. The parties do not disagree.

The arguments concerning competitive activities of Florida Power and Gainesville in their retail operations are basically economic contentions. Moreover, they bring into focus public policy considerations of the State of Florida —single or multiple power sources operating within specific retail service areas. Since we cannot resolve the question of whether a given area of Florida shall be served by one, two, or three utilities we see no reason why the result of retail operations of competing systems should control our judgment on whether bulk power facilities should be interconnected and operated coordinately. The regulatory jurisdiction conferred upon this Commission pursuant to Part II of the Federal Power Act does not extend to the regulation of retail rates, charges and services. That is expressly recognized as a matter of State concern. We are directing our Secretary to forward copies of this opinion to the Governor of the State of Florida, and to the Chairman of the Florida Public Service Commission. In doing so, we bring to their attention the showing of this record as to the duplication of retail service lines and competing retail electric operations of Florida Power and Gainesville.

Other Exceptions

We find no merit in Florida Power's exception to the examiner's ruling denying that Corporation's motion to strike staff testimony and exhibits relating to a showing that Florida Power and the other Florida electric utilities with which it is interconnected may benefit from the sale and exchange of firm power on a seasonal basis with the Southern System. The record shows that the question of seasonal diversity exchanges with the Southern System was introduced by Florida Power's own witness, and that the testimony submitted by staff's witness was appropriate in

furnishing perspective to the arrangement on diversity exchange between the Southern System and Florida Power.

We further do not agree with Florida Power that the examiner erred in failing to provide that Florida Power may purchase all or part of the 115 kv transmission line to be built by Gainesville so as to enable Florida Power to serve its customers within its service area. We do not find adequate record support for Florida Power's contention. On the basis of the evidence before us, Florida Power's concern on this particular issue appears to be premature and conjectural.

We note that the Examiner did not adopt the proposal by the staff that Gainesville and Florida Power be directed to set up a coordinating committee. We believe there is substantial merit and usefulness in such a committee and we therefore direct the parties to set up a coordinating committee to represent the parties in all matters arising from operations under the interconnection as hereinafter directed.

The Complaints Under Sections 205, 206, and 10 of the Act

The Examiner denied Florida Power's motion to dismiss Gainesville's cause of action under Sections 205 and 206 of the Act, wherein Gainesville alleged that Florida Power was discriminating against it by interconnecting with other electric utility systems and by refusing to interconnect with Gainesville. The examiner ruled that a Commission order directing Florida Power to connect its facilities with those of Gainesville rendered moot Gainesville's cause of action under the above sections. Florida Power takes exception to the examiner's ruling, stating that Sections 205 and 206 do not confer any authority upon the Commission to order the two systems to interconnect, and adding that the evidence of record does not establish any violation by Florida Power of these sections. We do not find Florida Power's argument on this point well founded. As staff correctly ex-

plains, the Commission has authority under Sections 205 and 206 to review the alleged practices of Florida Power which Gainesville asserted tended to discriminate against the City. Without passing at this time on the question as to whether or not Gainesville's complaint is well founded, it is sufficient for the purposes of this proceeding for us to find that the interconnection which we have ordered will remedy the situation which gave rise to Gainesville's complaint. The complaint before us on this particular point is thus indeed rendered moot.

The examiner also denied Florida Power's motion to dismiss Gainesville's cause of action under Section 10 of the Act. Florida Power alleged lack of jurisdiction and failure of proof. The examiner found that the evidence of record in this proceeding did not establish violation by Florida Power of Section 10(h) of the Act as alleged in Gainesville's complaint. Florida Power asserts error on the part of the examiner, claiming that the two rulings above are inconsistent, and it argues that a question of a violation of Section 10(h) of the Act is a matter for the courts rather than for the Commission. We do not agree with this contention. The Commission plainly has authority to ascertain whether a jurisdictional utility's wholesale rate arrangements are in violation of Section 10(h). See *Pacific Northwest Power Company, et al.*, Opinion No. 418, 31 FPC 247 at 274 (1964). The examiner's disposition of Gainesville's complaint under Section 10 is supported by the record, and we approve his action.

The Commission further finds:

(1) Florida Power Corporation is a public utility within the meaning of Section 201(a) of the Federal Power Act.

(2) The Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville), each is a "person" within the meaning of Section 202(b) of the Federal Power Act.

(3) It is necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act, that the Commission order Florida Power to establish physical connection of its transmission facilities, with the facilities of Gainesville at the Archer substation location as set forth in Finding (4) below, to sell energy to and exchange energy with Gainesville upon the terms and conditions as ordered below. Such sale and exchange of energy will not place any undue burden upon Florida Power, nor require Florida Power to enlarge its generating facilities for such purpose, nor impair its ability to render adequate service to its customers.

(4) It is necessary and appropriate in the public interest that a physical connection be established on the transmission system of Florida Power at the location known as the Archer Substation on the Florida Power Suwannee-Silver Springs 240 kv transmission line. Such physical connection shall include the equipment necessary for a 240/115 kv transformation, in accordance with recognized engineering practice. Unless otherwise provided by written agreement of Florida Power and Gainesville, the facilities for such physical connection shall conform substantially with the facilities described in Exhibit 3. Gainesville shall provide or compensate Florida Power for providing the facilities necessary for a 60 mva interconnection at Florida Power's Archer Substation, and also shall provide a 115 kv transmission line and facilities for connecting same to the Gainesville system. The facilities shall be substantially as described in Exhibit 3, modified as necessary for a minimum of 60 mva capacity.

(5) Gainesville shall own, construct, and service the 115 kv transmission line and its termination facilities on the Gainesville system. Construction, service, and ownership of the physical interconnection facilities at the Archer Substation shall be as agreed upon by the parties.

(6) Florida Power and Gainesville shall proceed to construct in the shortest reasonable time the interconnection facilities referred to in Findings (4) and (5) above.

(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spinning and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfer: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph (7)(g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph (7)(d) above). Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph (7)(f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph (7)(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph (7)(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(8) Gainesville shall reimburse Florida Power for the annual costs associated with providing frequency regulation for its control area until such time as Gainesville installs tie-line bias control equipment in its own system and assumes responsibility for regulation of its own control area. Florida Power is directed to submit to the Commission a proposed rate schedule covering this type

of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or in a method of allocating such costs to Gainesville, the Commission shall make the determination of the annual payment due from Gainesville to Florida Power after receiving the views and supporting calculations of each party.

(9) Gainesville and Florida Power shall establish a coordinating or administrative committee to represent the two parties in all matters arising under the interconnection arrangements hereinafter directed. The coordinating committee shall establish an operating subcommittee to be responsible for the day-to-day operations such as operation and maintenance schedules, control and operating procedures, and supervision of accounts.

(10) Within 60 days from the date of this opinion and order Florida Power shall submit to the Commission for consideration a proposed rate schedule reflecting the terms and conditions of the interconnection as set forth in the Findings above.

(11) Florida Power shall report to the Commission the date of commencement of service provided for herein within 30 days following the commencement of such service.

(12) This Commission's direction that Florida Power connect its facilities with those of Gainesville, as set forth in the Findings above, renders moot the allegations in Gainesville's complaint that Florida Power is violating Sections 205 and 206 of the Federal Power Act by interconnecting with other electric utility systems and discriminating against Gainesville by refusing to interconnect with Gainesville.

(13) The evidence of record in this proceeding does not establish violation by Florida Power of Section 10(h) of the Federal Power Act as alleged in Gainesville's complaint.

(14) Apart from the exceptions to the examiner's initial decision which were expressly granted in the foregoing Opinion and Findings, the exceptions to the examiner's decision should be denied.

(15) Florida Power's petition of July 8, 1968, to reopen the proceeding for the purpose of taking additional evidence should be denied.

The Commission orders:

(A) Florida Power shall establish connection with its facilities with those of Gainesville as described in Finding (4), *supra,* as soon as Gainesville completes the transmission lines and other facilities necessary to such interconnection, and thereafter Florida Power shall sell, supply, and exchange energy to and with Gainesville under the terms and conditions prescribed in Findings (7), (8), and (9).

(B) Florida Power shall notify this Commission when the interconnection ordered in Paragraph (A) is established and operative.

(C) The examiner's decision to the extent not inconsistent herewith is hereby adopted as part of this Opinion.

(D) Florida Power is ordered to comply with the directives set forth in Findings (8), (9), (10), and (11).

(E) Exceptions not expressly granted are hereby denied.

(F) Florida Power's petition of July 8, 1968, to reopen the proceeding for the purpose of taking additional evidence is denied.

By the Commission.

Commissioner Bagge concurring filed a separate statement appended hereto.

(SEAL)

GORDON M. GRANT,
Secretary.

BAGGE, Commissioner, concurring:

I cannot join in this opinion without expressing my concern for the irrational behavior engaged in by the parties to this proceeding. A rational society cannot tolerate the economic waste which has been documented on this record. If regulation is to serve any function at all, it should, at least, preclude meaningless duplication.

CARL E. BAGGE
Carl E. Bagge

2. Opinion on Rehearing of Federal Power Commission

OPINION No. 550-A
MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING

(Issued January 2, 1969)

O'CONNOR, Commissioner:

By Opinion No. 550 and Order dated November 5, 1968, the Commission found that it was necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act to order the Florida Power Corporation (Florida Power or Corporation) to establish physical connection of its transmission facilities with the facilities of the Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville or City), and to order Florida Power to sell energy to and exchange energy with Gainesville under certain specified terms and conditions.

On December 3, 1968, Florida Power filed an Application for Rehearing of the above opinion and order, stating that the Commission had erred (1) in finding jurisdiction; (2) in evaluating the basis and uses of the proposed connection; (3) in prescribing compensation or financial payments; and (4) in failing to condition the interconnection upon the prior agreement of Gainesville to eliminate and avoid wasteful duplication of facilities.

Upon consideration of the application of Florida Power and the numerous arguments set forth therein, the Commission finds that the grounds advanced for rehearing are not persuasive. These grounds are for the most part restatements, often in the same or similar terms, of arguments submitted by Florida Power earlier in this proceeding before the examiner and before the Commission. The arguments so restated include, among others, all of the arguments on the jurisdictional question; all of the allegations to the effect that Florida Power will gain no financial or engineering benefits from the interconnection; the assertions that Florida Power is entitled to charge Gainesville a demand charge of $3.08 per kw per year times the 50 mw capability of Gainesville's largest unit, and that without provision for such a demand charge the Commission's order will constitute an unconstitutional taking of Florida Power's property; and the arguments relating to the necessity for a conditioned interconnection order under which Gainesville will agree to eliminate and avoid wasteful duplication of facilities. The above contentions were all thoroughly considered and were rejected by the Commission in the preparation of Opinion No. 550 and Order.

In addition to the above, Florida Power advances certain grounds for rehearing which call for specific comment. Thus, throughout its application, the Corporation emphasizes the contention that Gainesville will not be able to render any service of significant value to Florida Power. Upon consideration of this argument we find that Florida Power has greatly underestimated Gainesville's capacity to be of service to the Corporation. Because of its electrical isolation, Gainesville has maintained a very large reserve capacity in relationship to its peak load. In 1965 its peak load was 51.1 mw, and its reserve capacity was 57.3 mw or 112.1 percent of peak demand. Although the purpose of this interconnection proceeding is to enable Gainesville to lessen its need for self-reliance, Gainesville's reserve capacity will continue to be large even after inter-

connection. The staff's witness has testified that during the ten year period 1970-1979, Gainesville's average minimum reserves at the time of Florida Power's annual peak hour demand will be 43 percent. According to staff's computations, Gainesville will be able to deliver, if there will be sufficient interconnection transmission facilities, anywhere from 60 mw to 100 mw to Florida Power during certain periods in January, April, and September 1970. This prediction that Gainesville will be able to furnish capacity of this magnitude to Florida Power plainly refutes Florida Power's assertion that the interconnection will prove to be a one-way street with all the benefits flowing from the Corporation to the City. The Commission is satisfied that the interconnection will permit a reciprocal exchange of benefits to the mutual advantage of both systems.

The above discussion as to Gainesville's future reserve capacity furnishes the ready answer to Florida Power's contention that the Commission erred in finding at pages 7 and 8 of Opinion No. 550 that "the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either direction is the electrical capacity of the facilities to be installed between the Company and City, 60,000 kva." Contrary to Florida Power's assertion, the evidence does establish that Gainesville will have electrical resources to permit a transfer to Corporation of 60,000 kva. Moreover, despite Florida Power's statement that the proposed connection could carry a 100 percent overload, thereby subjecting the Corporation's system to a transfer of 120,000 kva to Gainesville, it is plain that the load carrying capability of the connection will be limited by Gainesville's transmission line which is to be designed for 60,000 kva. According to the record, such line may carry an overload up to 80,000 kva, but only for short periods of time during cold weather.

Staff's studies of Gainesville's future reserve capacity also serve to refute Florida Power's allegations that there

is "no scintilla of evidence" to support the Commission's finding that Gainesville will become an additional interchange power source on Florida Power's network after the interconnection is consummated. Similarly, staff's studies rebut the Corporation's assertions regarding the insignificance of Gainesville's anticipated capacity contributions.

Florida Power takes issue with the Commission's findings that the Corporation agrees that the electrical interconnection should be established, and that the Corporation will be able to make some use of such interconnection. Florida Power argues that it has consistently maintained that the connection is not necessary and is not appropriate in the public interest. Florida Power's assertions on this point are not consistent with its prior pleadings. In its opening brief before the examiner, the Corporation stated that given the terms and conditions which it requested, it "is agreeable to a voluntary connection with Gainesville", that it proposes scheduled electrical service between the two systems, and that it is agreeable to seasonable exchange on a voluntary basis by mutual agreement of the parties. Plainly, the Corporation's assertions of error are not persuasive. We deem it appropriate, however, to modify our findings of the Corporation's position of agreement with qualifying language showing that Florida Power's position is subject to the conditions which it set forth in its pleadings. We also find it appropriate to delete from Opinion No. 550 the final sentence of the second paragraph on page 18, where we indicated that Florida Power was not in disagreement with our position that the "issue of overriding significance here is that it is in the public interest that the electrical isolation of Gainesville be ended as quickly as possible." Florida Power evidently does not agree with this view.

Florida Power disputes our findings at pages 4, 9, and 15 of Opinion No. 550 that Gainesville's capital cost for the interconnection will approximate $3,000,000. Florida Power claims that Gainesville's cost will be only $1,500,000,

and that any costs above this amount will represent expenditures required for Gainesville's internal purposes. The record shows that the consulting engineer retained by Gainesville testified that the investment for transmission facilities required to interconnect Gainesville's generating plant with Florida Power's system would be double the figure of $1,500,000. In light of the above explanation, we find that the expenditure of $3,000,000 will be required in order to enable Gainesville's generating capacity to flow into Florida's system.

Florida Power asserts that the Commission erred in finding that the interconnection will add an additional energy source in an area where Florida Power has no generating plant. The Corporation states that it now has three energy sources to supply its load in the Gainesville area and that it does not need a fourth. Florida Power's Form 12 for 1965 shows that the Corporation's Suwannee Plant is the closest generating source to its Gainesville load center. This plant is more than 75 transmission line miles away from this load center. The next closest plant is the Inglis Station which is more than 80 transmission line miles away. Florida Power's three energy sources are connected to the Gainesville load area by 69 kv transmission lines. According to staff, two of these lines serve other loads and could be vulnerable to outages. We agree with staff's position that the connection with Gainesville's generating resources would upgrade service reliability to the Corporation's customers in the Gainesville area.

Florida Power further contends that we have failed to give proper consideration to the fact that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity or mutuality of an interconnection. Florida Power refers to its agreement with the Florida Power & Light Company whereby the latter company paid all of the fixed charges and administrative costs of a connection until it

became mutually beneficial. It also refers to its agreement with the Gulf Power Company to whom Florida Power is now paying a fee for a connection which is not mutually beneficial. We have considered both of the cited cases and we do not find their precedent applicable here. In the Florida Power & Light Company situation, that company paid for the fixed charges of a circuit for one year when it required the use of the line and when Florida Power did not. In the Gulf Power Company case, Florida Power paid Gulf Power for the use of a line which the latter company constructed for Florida Power's needs and not for its own. Neither of these cases resembles the Gainesville situation in that Gainesville proposes to construct at its own expense transmission facilities which will be mutually beneficial to itself and to Florida Power. Florida Power also refers to a new connection which it voluntarily negotiated with another system after the close of the hearing under an agreement whereby the other system will pay Florida Power for emergency service $3.08 per kw per year times the capacity of the other system's largest unit. No probative significance as to a generally-established industry practice can be attached to this one instance. Moreover, there is no assertion that the new connection and the Gainesville situation are substantially similar from a factual standpoint.

Consideration has been given to Florida Power's statement that we erred in directing the Corporation to submit a proposed rate schedule for providing frequency regulation in Gainesville's control area until Gainesville installs tie-line bias control equipment. Florida Power contends that the Gainesville system and load will be so small that any charge Florida Power might make for adding Gainesville to Florida Power's control area for frequency regulation will be too insignificant to justify the cost of preparing and administering a rate schedule. In light of this contention, the Commission finds that the submission of the proposed rate schedule shall be made optional at Florida Power's discretion.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the Application for Rehearing filed in this proceeding by the Florida Power Corporation present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 550 and Order except as specified below.

The Commission orders:

(A) The first sentence in the final paragraph on page 6 of Opinion No. 550 is modified by the following new footnote 1a:

> 1a The findings made in this opinion which attribute to Florida Power a willingness to interconnect or an agreement as to the suitability of the interconnection are subject to the reservation that Florida Power's expressions of agreement are qualified by the conditions set forth in its pleadings.

(B) The final sentence of the second paragraph on page 18 of Opinion No. 550 is deleted.

(C) A new sentence is added to finding paragraph (8) of Opinion No. 550, as follows:

> In the event that Florida Power elects not to assess Gainesville with any portion of the annual costs associated with providing frequency regulation for its control area, it shall report such determination to the Commission, and the Commission may then waive the above requirements of this paragraph.

(D) Except as provided in ordering paragraphs (A), (B), and (C) above the Application for Rehearing filed in this proceeding is in all respects denied.

By the Commission.

(SEAL)

KENNETH F. PLUMB,
Acting Secretary.

APPENDIX C

Section 202 of the Federal Power Act, 49 Stat. 487, as amended, 16 U.S.C. 824a provides in pertinent part:

> Sec. 202 (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present it's views and recommendations, and shall receive and consider such views and recommendations.
>
> (b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such

public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

FEDERAL POWER COMMISSION, PETITIONER

v.

FLORIDA POWER CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the Federal Power Commission, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 17–33) is not yet reported. The opinions and orders of the Federal Power Commission (App. B, *infra*, pp. 34–57) are reported at 40 FPC 1227 and 41 FPC 4. The opinion of the hearing examiner (App. C, *infra*, pp. 59–72) is reported at 40 FPC 1248.

JURISDICTION

The judgment of the court of appeals (App. D, *infra*, p. 73) was entered on May 1, 1970, and was modified in a manner not here relevant by order of June 17,

1970.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 313(b) of the Federal Power Act (16 U.S.C. 825*l*(b)).

QUESTION PRESENTED

Whether the Federal Power Commission, in ordering the interconnection of electric power companies, must condition the interconnection upon compensation terms based on the relative benefits accruing to each utility rather than based upon the relative burdens that each places on the interconnected network.

STATUTE INVOLVED

Section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b), provides:

> (b) Sale or exchange of energy; establishing physical connections.
>
> Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons en-

[1] That order granted the Commission's motion to modify the judgment so as to eliminate the assessment of costs against the Commission.

gaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

STATEMENT

This case involves the Commission's determination that the Florida Power Corporation should be required to interconnect with the electric system of the City of Gainesville on terms similar to those now applicable to interconnections voluntarily made between other electric systems. The court below held that the Commission had authority under Section 202(b) of the Federal Power Act to require interconnection with a municipally owned power system and sustained the Commission's decision to order the interconnection in this case, but disapproved the basic method employed by the Commission to determine the provisions for compensation in interconnection orders.

The City of Gainesville, Florida, operates an isolated electrical system serving approximately 17,000 retail customers in the City and its environs (App.

B, p. 35). Florida Power Corporation serves 370,000 retail customers and supplies wholesale power to 12 municipal distribution systems and 9 REA cooperatives in an area completely surrounding the City of Gainesville (App. B, pp. 35–36). Florida Power is interconnected with Florida Power & Light Company, Tampa Electric Co., Orlando Utilities Commission, the City of Jacksonville,[2] and (through several connections of limited capacity with the Southern System in Georgia and Florida) other generating capacity of the country[3] (J.A. 158–159).[4]

1. THE PROCEEDING BEFORE THE COMMISSION

On November 22, 1965, Gainesville filed with the Commission an Application for Interconnection and Complaint against Florida Power (J.A. 300). In addition to seeking an interconnection, Gainesville alleged unlawful discrimination in violation of the Federal Power Act in that Florida Power had interconnected with other electric systems while refusing to interconnect with Gainesville on similar terms.

After a full hearing and an examiner's decision, the Commission held that it had jurisdiction under Section 202(b) of the Federal Power Act to order the interconnection (App. B, pp. 35, 49), and that it would

[2] Florida Power Corporation is approximately half the size of Florida Power & Light and is larger than each of the other three systems.

[3] Some 94 percent of the generating capacity in the continental United States is interconnected and operates in electrical synchronism.

[4] J. A. references are to the Joint Appendix filed with the court below.

be in the public interest to order Florida Power to interconnect its facilities with those of Gainesville (App. B, pp. 37, 49). The Commission found that benefits to both parties would result from the interconnection (App. B, pp. 37–39). It also specifically found that the interconnection it ordered would not place an undue burden on Florida Power, would not require that company to enlarge its generating facilities and would not impair its ability to render adequate service to its customers (App. B, p. 37).

The Commission's order specified compensation terms related to the services that might be rendered as a result of the interconnection. The charges specified by the Commission for actual energy transfers across the proposed interconnection (App. B, pp. 40–41, 51) were subject to little controversy and were not challenged on review. There was, however, substantial dispute with respect to Florida Power's claim that it should be compensated about $150,000 annually for the back-up potential the interconnection made available to Gainesville.

The Commission, expressly noting that it was directing neither Florida Power nor Gainesville to provide firm power service to the other (App. B, p. 41, n. 4),[4] concluded that no charge was warranted for such

[4] The reserves of the interconnected system will be available to Gainesville only on an "if and when available" basis. There will be times, if the interconnected system's largest unit goes out unexpectedly, when the system will have no instantaneously ready ("spinning") reserve available for short periods of time. In the unlikely event that two large units were to go out within a short period, there might be no reserves available on the system for a few hours. If Gainesville were to suffer a large outage during such a period, it would obtain no assistance from the inter-

back-up potential. It explained that in determining the appropriate compensation for services rendered among members of an interconnected network, the appropriate test is related to the burden each system places on the network, not on the benefits or savings that each participant realizes over alternate methods of providing generating capability (App. B, pp. 37–38, 42–43). Only through the application of this test, the Commission noted, would there be no economic penalty for being last to join the interconnected network (App. B, p. 38).

In applying this test here, the Commission found that the reserve requirements it was imposing on Gainesville would enable Gainesville to contribute its proportionate share of instantaneous emergency service to the pool when required and that no additional responsibility or burden would be placed on the present pool members (App. B, pp. 43–44, 49). It noted that Gainesville would be required to expend some $3,000,000 for the interconnection while Florida Power would incur no expense (App. B, p. 44). Finally, it found that neither Florida Power nor other power companies had imposed demand charges comparable to those being sought from Gainesville in any contracts for voluntary interconnection (App. B, p. 39, n. 3).

In all the circumstances, the Commission held that Florida Power "plainly bears the burden of justifying an apparently discriminatory imposition in this

---

connection. In situations where there is no obligation on a utility to plan or operate its system to provide service to another, a "demand" charge is ordinarily not imposed in utility regulation.

one instance" (App. B, p. 44), and that the burden had not been met.

2. THE COURT OF APPEALS DECISION

On review, the court below sustained the Commission's holding as to its jurisdiction and its requirement that Florida Power interconnect with Gainesville. It set aside the Commission's order, however, "insofar as no provision for the reasonable compensation of Florida Power is made" (App. A, p. 33). Specifically, the court stated that "although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection" (App. A, p. 32). And it concluded that the Commission's test of proportionate utility responsibility resulted in the small system's receiving high benefits and, because of its size, "no real obligations", while the large system "receives no benefit but does incur real, substantial responsibilities" (App. A, p. 33). Accordingly, the court held that the Commission's test does not meet the "reasonable compensation" standard of Section 202(b).

REASONS FOR GRANTING THE WRIT

The issue presented by this case is of great importance to the administration of the Federal Power Act. The court of appeals held unlawful a Commission order prescribing an arrangement with respect to reserve sharing or "back-up" service which obtains almost universally in voluntary agreements among

utilities. Although the court's opinion appears to leave the Commission substantial freedom in setting price terms, the court has in fact declared unlawful the only arrangement which, in the Commission's judgment, fairly reflects the economics of the situation and properly encourages the beneficial interconnection of electrical systems. The additional costs of interconnection which the court's decision would impose on small utilities would act to deter rather than encourage the further interconnections needed among electric utilities of all sizes to enhance overall reliability.

1. There is a very substantial public need to encourage interconnections. The power demands of this nation are growing at an unprecedented rate. Interconnection of systems, which with the Commission's encouragement is becoming increasingly common, allows utilities to share reserves and thus effects both substantial capital savings and significant increased reliability.

To assure reliability of service, each electrical system, no matter how large or small, must maintain reserve capacity sufficient to cover forced outages of its generation equipment; if such reserve capacity is not immediately available, a blackout or brownout may be precipitated. Since the amount of reserves a system normally maintains is essentially dependent on the size of its largest generating unit,[6] the interconnection

[6] Systems larger than the Florida "pool" will usually base their reserve requirements upon a figure in excess of the size of their largest single generating unit, depending upon the mathematical probability of simultaneous outages on the system.

of several companies reduces dramatically the total reserve capacity that would otherwise be required since each company need provide only a proportionate share of the reserve requirement necessary to replace the largest generating unit of the interconnected system should it fail.

A related benefit of reserve sharing through interconnection is that it permits the installation of larger generators than would otherwise be feasible, as the losses in generating capacity which might be brought about by outages of such larger generators would in part be covered by the extra reserves made available through interconnection. Savings are thus realized since the unit cost of producing electric power is generally reduced by installing larger units.

The Commission has concluded that, in order to maximize interconnections which produce these substantial benefits, it is necessary that the terms of compensation between utilities required to interconnect reflect only the electrical burdens each utility places upon the interconnected system. Added charges reflecting the relative benefits received would, in the Commission's view, make it more likely that small utilities would forego requesting interconnection. The effect of the holding below, however, is to require that benefits received must in some manner be reflected in the terms of compensation, since there is no other criterion upon which the court's required allocation of fixed cost (over and above the Commission's requirement of "proportionate utility responsibility") (see App. A, p. 33) can be based.

The court's decision to impose such additional charges not only places an undue burden on the smaller

utility companies (see, *infra*, pp. 10–14), but threatens to disrupt the entire composition and structure of the electric industry—which is now composed of systems of diverse size working together in power pools based on the premise that a sharing of responsibilities is fair to all. If the larger utilities, or those already members of a pool, can lawfully impose a "value" charge, not heretofore thought justifiable, upon the small utilities with which they compete, either initially or when pooling arrangements can be reopened, it seems improbable that they will hesitate to do so.

This would mean that further voluntary agreements would be unlikely and that there would be a real possibility that continuation of present pooling arrangements might be jeopardized, resulting in severe damage to the public interest in maintaining a coordinated system of public utilities of varied sizes and of varied ownership capable of providing inexpensive and reliable power. The decision below thus threatens serious impairment of the Commission's efforts to encourage voluntary interconnection upon reasonable terms, in fulfillment of the purpose of Section 202a to assure an adequate, reliable base of power for the Nation.

2. Notwithstanding an apparent suggestion to the contrary in the court of appeals' opinion, Florida Power and the other pool members will incur neither additional costs nor additional obligations as a result of the interconnection with Gainesville and in fact may well be able to save on their reserve costs, as noted above. Nothing in the Commission's order requires Florida Power to make any firm power commitment to Gainesville; Gainesville is simply allowed

to draw power in emergencies (for a reasonable fee) to the extent it is available. Moreover, the Commission expressly found that Gainesville will place less burden on the interconnection than will Florida Power.

The Commission held that the proper basis for determining appropriate compensation for emergency back-up services rendered between interconnected electric systems is an evaluation of the electrical use that each system would make of the interconnection, not an evaluation of whether one system *needed* the reserve sharing provided by interconnection more than the other in order to avoid costs which would otherwise be incurred to obtain the needed reserves. This holding merely applies the cost concepts that have long inhered in the Commission's regulation of utilities. Unless it can be shown (as it was not here) that one member would place markedly greater electrical reliance on the interconnected system than another, equity is best served if each member of the interconnected system maintains its proportionate share of the spinning reserves (instantly available reserves) and installed capacity needed by the entire interconnected system.

Every outage on an interconnected system automatically draws on every other available system in the pool. If Florida Power or Florida Power & Light loses a large unit, it will draw on all interconnected systems as needed up to the capacity of each. The larger systems of the pool will, of course, usually furnish the larger share in absolute terms of the necessary emergency power to others when needed, simply because

they will ordinarily be operating with a larger number of kilowatts of reserve due to their size. But the larger systems will also tend to need assistance in relatively larger quantities of power when outages or peak demands force them to rely on interconnections for additional reserves.

In the context of this case, a staff study referred to by the Commission (App. B, p. 43) showed that Florida Power would be expected to rely on the interconnected system for back-up service much more often than would Gainesville. While the portion of Florida Power's needs that would be supplied by Gainesville at any given time would not be great, it would be in proportion to Gainesville's size.

From a cost viewpoint, therefore, the Commission was correct in concluding that no additional monetary compensation is warranted for back-up service when an interconnected company maintains reserves and capacity commensurate with its demands on the interconnection. But the court below held that this was not enough because the benefits of interconnection are necessarily greater for a small system than a large system.[7] The court evidently meant merely that the opportunity to achieve economies of scale while maintaining reliability of service makes an interconnection allowing operation on a non-isolated basis more important or beneficial to a small system than

[7] We do not believe this assessment of relative benefits to be correct and will discuss the point fully if certiorari is granted.

it would be to a large one already a member of an interconnected system.[8]

By requiring the Commission, contrary to the Commission's own informed assessment, to give weight to these factors in determining compensation reasonably due between interconnected utilities, the court of appeals failed, we submit, to give the Commission's judgment the deference it is due in this highly complex and technical field.[9] Indeed, the court's requirement that relative benefits be taken into consideration is contrary to the Commission's fundamental principle in rate regulation that utilities are not entitled to eco-

[8] The court's reference to the "added obligation" imposed upon Florida Power by the interconnection apparently refers to the fact that Gainesville, like other interconnected systems, will receive emergency back-up service as a result of the reserve sharing. While this service is valuable to all parties concerned, it imposes no burden on Florida Power. The Commission's order not only requires no capital expenditures by Florida Power, but, since it requires Florida Power and Gainesville to serve each other with emergency power only to the extent that the extra power is available on the system, it will allow Florida Power to reduce its spinning and ready reserves under its prescribed operating procedures, because Gainesville's reserves will now be taken into account and the size of the largest interconnected generating unit remains the same.

[9] This Court has emphasized that Congress has entrusted the regulation of wholesale electric power sales and of natural gas pricing to the informed judgment of the Commission, and not to the preferences of reviewing courts. "A presumption of validity therefore attaches to each exercise of the Commission's expertise, and those who would overturn the Commission's judgment undertake 'the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.'" *Permian Basin Area Rate Cases*, 390 U.S. 747, 767; *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602.

nomic rents resulting solely from their size or economic position. See *South Carolina Generating Co.* v. *Federal Power Commission*, 249 F. 2d 755, certiorari denied, 356 U.S. 912.

3. Finally, the test adopted by the Commission and rejected by the court below is consistent with industry practice. Florida Power pays no "value" charge to Florida Power & Light, its much bigger partner in interconnection, nor does it receive such a charge from Tampa Electric, Orlando or Jacksonville, its smaller partners. None of the utilities in the Florida pool pay "value" charges to the Southern System, through which they receive back-up power from other parts of the country. Nor, as the Commission noted (App. B, p. 39, n. 3) did any pooling agreements or bilateral arrangements between large and small systems examined by a staff review reveal any other example of such a charge, although a system previously operating in isolation would always pay a heavy "value" charge to join an interconnected system if the court of appeals' theory were correct.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

ERWIN N. GRISWOLD,
Solicitor General.

GORDON GOOCH,
General Counsel,

PETER H. SCHIFF,
Solicitor,

LEONARD D. EESLEY,
Assistant General Counsel,

ROBERT C. MCDIARMID,
Assistant to the General Counsel,
Federal Power Commission.

JULY 1970.

399-803 O - 70 - 2

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27404

FLORIDA POWER CORPORATION,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

Petition for Review of an Order of the Federal Power Commission (Florida Case)

(May 1, 1970)

Before BROWN, Chief Judge, TUTTLE and MORGAN, Circuit Judges.

BROWN, Chief Judge: In this petition to review a Federal Power Commission order requiring the interconnection of the electrical transportation lines of the Florida Power Company with the distribution system of the City of Gainesville, Florida, primarily to secure emergency back-up power to overcome outages, two basic issues are presented. First, Florida Power contends that the Federal Power Act, 16 U.S.C.A. §791

et seq., does not give the Commission jurisdiction to order a privately owned power company to interconnect its lines with those of a municipally owned system that both generates and distributes its own power. Second, the Commission's basic policy concerning the terms upon which an interconnection will be ordered is questioned.[1] Florida Power argues that the Commission's policy of looking to the proportionate burdens that each system places upon the interconnected system networks instead of the benefits received as a result of the particular interconnection is inconsistent with the statutory authority to compel the interconnection.[2]

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[1]Florida Power asserts that it should be compensated financially for providing the interconnection. By a subsidiary point it also argues that the City should be restricted in the areas in which it directly competes with Florida Power by duplication of facilities. We believe that the question of duplication of facilities is not directly related to this case and hold that the Commission was proper in refusing to condition the ordered interconnection of facilities on the elimination of this duplication.

[2]Section 202(b) of the Federal Power Act, which grants the Commission authority to order interconnection, provides:

> "Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with any such persons: Provided, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy

We conclude that the Commission has jurisdiction to order this interconnection. We do not believe, however, that the Commission's order concerning the terms of this interconnection is consistent with the statute and thus we refuse enforcement of the order insofar as it fails to compensate Florida Power for making available large quantities of back-up power at the interconnection.

I.

A. The City of Gainesville System

The City of Gainesville owns an isolated electric generation, transmission, and distribution system that serves 17,212 customers in the City and the adjacent areas. This system is projected to have a capacity of 138.4 mw[3] of generation in 1970 with its largest unit rated at 50 mw. The only transmission facilities operated by this system are a 115 kv[4] loop around the City and a 115 kv line to establish connection with Florida Power. The projected maximum peak hour

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when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

16 U.S.C.A. § 824a(b).

[3]A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

[4]A kilovolt (kv) is a large unit of electrical voltage used to rate transmission lines. Depending upon the size of the conductor a 115 kv line has a capacity of approximately 125 mw.

demand (peak load) of the City's system in 1970 will be 102 mw.

B. Florida Power's System

In contrast to the small City of Gainesville system[5] Florida Power operates a major generation, transmission, and distribution system that serves 370,000 retail customers and supplies wholesale power to 12 municipal distribution systems and 9 REA cooperatives. It covers 20,600 square miles in West, Northwest, and Central Florida. During 1970 Florida Power will have 2114 mw of generation and projects a peak load of 1826 mw.

Florida Power's massive system operates through a backbone transmission network, and is connected with four major electrical systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Company, Orlando Utilities Commission and Jacksonville Electric Authority). It is also connected with Georgia Power Company and Gulf Power Company.

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[5]The disparity in the sizes of the Gainesville and Florida Power systems and in the sizes of their electrical resources is striking and highly significant. These disparities in size are increasing each year as a result of the annual load growth on the Florida Power system being currently almost twice Gainesville's 1966 peak load and in excess of Gainesville's projected 1970 peak load of 102 mw. Gainesville's largest 50 mw generator is dwarfed by 8 generators on the Florida Power system and is about the equivalent of units that Florida Power uses only to meet peak load conditions and frequently are placed on cold shut-down.

C. The Results of the Interconnection

Obtaining emergency reserves[8] — both instantly available and peak load installed capacity — in small isolated systems such as that operated by the City is a difficulty accentuated more by isolation than size. The only two solutions are the acquisition of additional generating capacity that will rarely be used and which is economically inefficient since a large portion of it must be kept in operation or "spinning" in order to provide the essential instantaneous reserve (see note 6, *supra*) or to end the system's isolation by connection with other systems that can provide the emergency reserve.

To acquire emergency reserve of 50 wm, the size of its largest generator, the City chose the latter solution and sought to achieve the desired interconnection

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[8]Emergency backup service is providing the reserve of generation which a system must have to protect against inability to supply load in the event of a failure or outage of generation. Generally speaking, it is industry practice to have available a reserve of generating capacity at least equal to the capacity of a system's largest generator. To the extent emergency backup service is available from some other source, a system can reduce its installed reserve of generation. Generally speaking, it also is industry practice to protect against a failure or outage of a system's largest generator by operating at all times a reserve of generation (customarily referred to as spinning reserve) equal to the load being carried by the largest generator in operation. The operating reserve of generation, as distinguished from the installed reserve of generation, is called spinning reserve because it must be in operation and be instantaneously available. If the operating reserve of generation is not instantaneously available with a loss in frequency of less than one-half cycle per second — 1/120th of a second — the system will suffer a frequency disturbance that can cascade, trip out other generating units, and shut down the entire system.

through negotiation with Florida Power. When they were unable to come to terms, the City filed an "Application for Interconnection and Complaints Against Unlawful Actions"[7] with the Commission.

Pursuant to this application a hearing was held. The Presiding Examiner found that an interconnection was clearly in the public interest since the City would be relieved of the necessity of maintaining and adding to its present inordinately large and inefficient generating reserve. Under the terms of the recommended order Gainesville would have an additional reserve capacity equal to the size of its largest generator, would save approximately $300,000 per year[8] in investment and operating cost even after paying the cost of the interconnection,[9] and would have the reliability of a bulk power supply that it could have not previously achieved.

The Presiding Examiner found, however, that the benefits of the interconnection flowed in the direction

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[7]The City's charges of unlawful activity relate to the direct competition between the City and Florida Power in rural Alachua County. See note 1, *supra*.

[8]The Presiding Examiner found that the savings would be "in excess of $300,000." The Commission staff submitted a study showing Gainesville would realize investment and operating savings from reduction of its installed reserve of generation averaging about $231,000 a year for the period of 1970 through 1979. Florida Power witnesses estimated these savings at $520,000 a year.

[9]The Commission and Presiding Examiner agreed that the City should bear the whole cost of building the physical facilities necessary for the interconnection. This will cost beween $1,500,000 and $3,000,000 depending on the length of the transmission lines the City chooses to use.

of the City's system. Florida Power, because of the relatively small size of the City's generators, would receive no significant additional reliability.[10] Because of the automatic nature of the interconnect, however, Florida Power will sell some power to the City in non-emergency situations, but these periods will be rare because the City has already built up large quantities of excess capacity that can be used to meet high demand periods. The Presiding Examiner recommended that, even though no additional facilities would be needed and there would be no undue burden on the Florida Power system, Florida Power should be compensated.

He recommended that no set demand charge be imposed on the City. Instead, he recommended that "the total operating benefits in dollars received by each party by reason of the interconnection be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference be made by the party receiving the greater benefit by reason thereof to the party less advantaged ...."

The Commission agreed that the interconnection was in the public interest. It concluded, however, that no compensation should be paid. Its decision was based

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[10]The Presiding Examiner concluded that Gainesville could contribute only 6 mw, 3 mw, and 2.5 mw to Florida Power's system reliability. It seems clear that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages or more than 400 mw. Moreover, Florida Power's backbone transmission network has so many power sources more efficient and economical than Gainesville's small generators it is totally unrealistic to consider the City's system a significant power source.

on a policy of responsibilities which it phrased this way:

> "As a general proposition we note that whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network."[11]

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[11]City of Gainesville v. Florida Power Corp., 1966, ——— F.P.C. ———, ———.

Pursuant to that policy it concluded that payment for the energy actually used and the City's assumption of the cost of the interconnection adequately compensated Florida Power. As expected revenues from all types of services called for by the compulsory interconnect bear upon compensation, the order prescribed the rates, etc. for the three types of services set out in paragraph 7(d) (e) and (f), which are not to provide instantaneous emergency reserves.[12]

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[12]The terms and conditions of the services are set out in paragraphs seven and eight of the order:

"(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spinning and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of

Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfers: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph (7)(g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph (7)(d) above). Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph (7)(f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph (7)(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph (7)(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(8) Gainesville shall reimburse Florida Power for the annual costs associated with providing frequency regulation for its control area until such time as Gainesville installs tie-line bias control equipment in its own system and assumes responsibility for regulation of its own control areas. Florida Power is directed

II.

Jurisdiction

Florida Power makes a frontal assault upon the Commission's action by a challenge to the Commission's authority to act upon the petition of a generating municipal system. The argument is that Section 202(b) of the Federal Power Act, 16 U.S.C.A. § 824a(b) (see note 2, *supra*), only authorizes the Commission to compel a public utility to establish a physical connection with "one or more *persons* engaged in the transmission or sale of electric energy" (emphasis added). The argument then turns to section 3, the definitional section of the statute, 16 U.S.C.A. § 796,[13] and points out

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to submit to the Commission a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make the determination of the annual payment due from Gainesville to Florida Power after receiving the views and supporting calculations of each party."

[13] "The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

* * *

(3) corporation means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include municipalities as hereinafter defined;

(4) person means an individual or a corporation

* * *

(7) municipality means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power. . . .

16 U.S.C.A. § 796.

that "person" is defined as "an individual or a corporation" and then that section 3(3) defines "corporation" to expressly exclude municipalities. Florida Power also points out that Section 201(f), 16 U.S.C.A. § 824(f), specifically provides that no

> "provision in this Part [II, which includes Section 202(b)] shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing ... unless such provision makes specific reference thereto."

Despite the apparent cogency of the argument, this use of the definitional section of the statute as a limitation on the scope of the Commission's jurisdiction has previously been rejected. In *United States v. Public Utilities Commission*, 1952, 345 U.S. 295, 73 S.Ct. 706, 97 L.Ed. 1020, the Court held that the definitional section did not limit the Commission's authority over rate regulation.[14] In addition, in *New England Power Co.*

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[14]The Court relied heavily upon the legislative history to demonstrate that the definitional sections were not controlling. The Court said that it did not "find any evidence of conscious coordination of §§ 3(3), (4) and 201(d) from the legislative history. True, they were simultaneously enacted, and, in fact, the interpolation of the word 'person' into § 201 (d) occurred after the §§ 3 (3) and 3 (4) definitions were in existence in S 2796, 74th Cong., 1st Sess, as passed by the Senate and reported to the House, June 13, 1935. But this alteration came at the insistence of the House. The Senate had provided for jurisdiction over sales occurring before or after interstate transmission, id., § 201 (f), and the House amendment, from which § 201 (d) in its present form stemmed, covered sales during the trans-

v. FPC., 1 Cir., 1965, 349 F.2d 258 the First Circuit held that the definitional sections did not limit the power of the Commission to order an interconnection between a public utility and a nongenerating municipality.

Florida Power also argues that, independent of the language of the statute, the legislative history shows that generating municipalities were not "persons" for purposes of Section 202(b). This argument is more viable than the one limited to the language of the statute since both the Supreme Court and the First Circuit specifically reserved the question of whether a "municipality which generates as well as distributes electricity is to be regarded as a 'person' under this section of the Act." *New England Power Co. v. F.P.C., supra*, 349 F.2d at 263. See also *United States v. Public Utilities Commission, supra*, 345 U.S. at 312-13, 73 S.Ct. at ——, 97 L.Ed. at 1036-37. Moreover, Florida Power's position seems to draw support from the statements of the principal draftsmen of the Act, Federal Power Commissioner Clyde L. Seavey and Mr. Dozier A. DeVane,[18] Solicitor for the Commission. And such state-

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mission across state lines for the first time. So the House Report is, we think, significant in its redefinition of the section: A 'wholesale' transaction is defined to mean the sale of electric energy for resale. HR Rep. No. 1318, 74th Cong, 1st Sess, p 8. We conclude, therefore, that the Congress attached no significance of substance to the addition of the word person, and in fact did not intend it as a limitation on Commission jurisdiction. Indeed quite the contrary was sought by the House amendment of § 201 (d)."

345 U.S. at 313, 73 S.Ct. at ——, 97 L.Ed. at 1036.

[18] Later a United States District Judge.

ments may be powerful indicia of legislative intent and purpose. *Zuber v. Allen*, 1969, ____ U.S. ____, ____, 90 S.Ct. ____, ____, 24 L.Ed.2d 345, 354.[16]

On closer examination, however, it is apparent that the statements of Commissioner Seavey and Solicitor DeVane refer only to the Commission's power to order public utilities to act as transporters of — "wheel"[17] — low cost government power to a government customer at the expense of a privately owned company. See, e.g., *Hearings Before the Committee on Interstate and Foreign Commerce*, House of Representatives, on H.R. 5423, 74th Cong., 1st Sess. (1935), 394, 395, 397, 532, 546, 559, 564; *Hearings Before the Committee on Interstate Commerce*, Senate, on S. 1725, 74th Cong., 1st Sess. (1935), 257, 260, 271. And, although there are general statements by them that do not necessarily refer to "wheeling". see e.g., Senate Hearings, *supra* at 256, after close examination of the entire legislative

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[16]In *Zuber* the Court said: "It would be perverse to assume that congressional drafters, in eliminating ambiguity from the old act, were careless in listing their exceptions and selecting the illustrations from which the Committee Report from which their words would ultimately derive content." ____ U.S. ____, ____ S.Ct. at ____, 24 L.Ed.2d at 356. It should also be noted that the Supreme Court has previously used this testimony as an indication of legislative intent. In United States v. Public Utilities Comm., *supra*, the Court said that there "is evidence . . . that the exclusion of producing municipalities from Commission jurisdiction was intended. For instance, DeVane, Solicitor of the Federal Power Commission at the time, testified as follows before the Senate Committee . . . [excerpts from testimony]".

[17]Wheeling is where A, which has excess generating capacity, seeks to transmit power to its customer C with whom it has no transmission connection, by using the transmission facilities of B, which has connections with both A and C.

history we can find no support for the conclusion that municipalities which generate their own power were to be treated differently from nongenerating municipalities concerning anything other than "wheeling".[18]

III.

The Terms of the Ordered Interconnection

Even though the Commission has jurisdiction to order this interconnection and even though the connection is "necessary or appropriate in the public interest" and the interconnection will not put an "undue burden ... upon" the facilities of Florida Power or "impair its ability to render adequate service to its customers", the terms of the interconnection do not adequately satisfy the statutory requirements[19] because they do not provide Florida Power with the "reimbursement reasonably due" it. See 16 U.S.C.A. § 824a(b), (see note 2, *supra*). This interconnection will be of substantial benefit only to the City. Through the interconnection it receives essential emergency back-up, which is a service at all times instantaneously available, and which protects it against the outage of the largest of its generators. (See IC, *supra*). The

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[18]From the legislative history cited by the Court in the *California Utilities* case, *supra*, it is apparent that when it specifically reserved the question of generating municipalities it was referring to the problem of "wheeling". See United States v. Public Utilities Commission, 345 U.S. at 312-13, 73 S.Ct. at ——, 97 L.Ed. at 1036-37.

[19]Although Florida Power makes a constitutional attack upon the Commission's action, we find it unnecessary to pass upon the questions raised.

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benefits to Florida Power, however, are largely illusory.[20]

But, although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection. And this burden will be reflected in their cost-based rates. They are entitled to not have to carry the entire responsibility for providing an extremely valuable service.

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[20] The Commission indicated that it believed Florida Power would receive certain vague but substantial benefits as a result of the interconnection. These vague benefits were (i) possible deferral of future generating units because of coordinate planning of new facilities, (ii) the electrical operating benefits from the availability of the City's small power contribution, and (iii) the possibility of additional reliability from the City's contribution since Florida Power does not have generators in the immediate area (see note 10, *supra*.) But these benefits are unrealistic as well as vague. Florida Power's largest present unit has a 527 mw capacity and a 875 mw unit is scheduled to be in operation in 1972. Obviously, any savings from coordinated planning with a system with the largest generator with only a 50 mw capacity are highly theoretical. And the Commission did not even suggest how the interconnection with the City was to contribute operational savings and reliability (reliability is the most unrealistic of all, see note 10, *supra*) to Florida Power.

The Commission's conclusions were, however, tentative as well as vague and unrealistic — "If we were to appraise Florida Power's request for an annual standby charge in terms of 'splitting of the benefits' test . . ." — and are not fact-findings protected by the umbrella of the substantial evidence test. As Mr. Justice Frankfurter said in SEC v. Chenery Corp., 1943, 318 U.S. 80, 93, 94, 63 S.Ct. 454, ——, 87 L.Ed. 628, 636, "Its action must be measured by what the Commission did, not what it might have done". See Schaffer Transportation Co. v. United States, 1957, 355 U.S. 83, 78 S.Ct. 173, 2 L.Ed.2d 117; 2 K. Davis, Administrative Law Treatise §§ 16.05, 16.09 (1958).

The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation.

Thus we deny enforcement of this order insofar as no provision for the reasonable compensation of Florida Power is made. The remainder of the order, however, is enforced, and compliance need not be delayed until the amount Florida Power is to be paid is determined by the Commission and that determination reviewed.

But in sending this case back to the Commission for it to fix a formula for computing what would be reasonable compensation, we do not even whisper what that formula should be. On reconsideration the Commission may determine that the set demand charge requested by Florida Power is a reasonable formula. It may determine that the 50 percent-of-the-difference-in-benefits formula of the Presiding Examiner is more appropriate. It may decide to use parts of both, neither formula, or a completely different formula. This is for the Commission subject to later review.

ENFORCEMENT GRANTED IN PART AND DENIED IN PART.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX B

OPINION NO. 550

GAINESVILLE UTILITIES DEPARTMENT AND CITY OF GAINESVILLE, FLORIDA v. FLORIDA POWER CORPORATION, DOCKET NO. E-7817

OPINION AND ORDER DIRECTING PHYSICAL INTERCONNECTION OF TRANSMISSION FACILITIES AND PRESCRIBING TERMS AND CONDITIONS THEREOF

(Issued November 5, 1968)*

George Spigel and *Reuben Goldberg* for Gainesville Utilities Department and City of Gainesville, Florida.

Richard W. Emery and *Robert R. Bair* for Florida Power Corporation.

Watt N. Martin for the Staff of the Federal Power Commission.

INTERCONNECTION, RELIABILITY, SALE OF ELECTRIC ENERGY, TRANSMISSION FACILITIES, COMPETITION

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

O'CONNOR, *Commissioner:*

This proceeding arises out of an Application for Interconnection and Complaint Against Unlawful Actions filed under the Federal Power Act on November 22, 1965, by the Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville or City). Gainesville requests (1) an order under Section 202(b) of the Act directing Florida Power Corporation (Florida Power or Corporation or Company) to establish a physical interconnection with Gainesville, and to sell and exchange energy with Gainesville; (2) an order requiring Florida Power to cease certain practices which allegedly discriminate against Gainesville and violate Sections 205 and 206 of the Act; and (3) an order requiring Florida Power to desist from certain actions which allegedly are in restraint of trade and violate Section 10 of the Act.

Florida Power filed a motion to dismiss Gainesville's application and complaint, alleging lack of jurisdiction. Florida Power also filed an answer to such complaint. On April 19, 1966, the Commission directed a hearing on the issues raised by the parties. Hearings were held at various times between November 16, 1966, and March 16, 1967, at Gainesville, Florida, at St. Petersburg, Florida, and at Washington, D.C.

On January 17, 1968, *infra*, p. 1248, the Presiding Examiner, Martin E. Rendelman, issued an initial decision in which he (1) denied Florida Power's motions to dismiss; (2) ordered a connection between

Florida Power and Gainesville, subject to the condition that the parties first negotiate an agreement to eliminate and avoid all duplication of facilities; (3) prescribed the terms and conditions covering the sale and exchange of electric energy; (4) found that an order for interconnection renders moot Gainesville's complaint that Florida Power is violating Sections 205 and 206 of Act; and (5) found that the evidence does not establish the alleged violations by Florida Power of Section 10 of the Act.

This proceeding is before the Commission on the Examiner's decision, exceptions filed by Gainesville, Florida Power, and staff, and oppositions to such exceptions filed by the respective parties. Oral argument was held before the Commission on July 9, 1968. The basic issues involve (1) the jurisdictional question; (2) the conditioning of the interconnection order; and (3) the prescription of rates of payment between the parties.

Holding

For the reasons set forth below we find that the Examiner was warranted in denying Florida Power's motions to dismiss and in ordering the interconnection. We further find that the order for interconnection should not be qualified by the pre-condition prescribed by the Examiner, and that certain changes are appropriate in the rates proposed by the Examiner.

Background

The City of Gainesville owns an isolated electric generation, transmission, and distribution system, valued at $21,104,036,[1] which is operated by the Gainesville Utilities Department. This system serves 17,212 retail customers in a 22 square mile area covering the City and adjacent portions of Alachua County, Florida. In 1965 Gainesville's generating plant had a total capability of 108.4 mw as against a peak load of 51.1 mw. The system's reserve capacity was 57.3 mw or 112.1 percent of peak demand. Gainesville anticipates a peak load of 102 mw by 1970.

Florida Power is a "public utility" subject to the jurisdiction of the Commission. Its system, currently valued at $500,000,000, includes substantial generation, transmission, and distribution facilities. Florida Power is interconnected with and operates in parallel with the Interconnected Systems Group and with the Florida Power & Light Company, Tampa Electric Company, Orlando Utilities Commission, and the City of Jacksonville. Florida Power presently serves 370,000

[1] Unless otherwise stated, the statistics in this opinion usually reflect operations for the year 1965 or in some cases 1966, as set forth in the evidence of record in this proceeding.

retail customers, and it supplies power at wholesale to 12 municipal distribution systems and to nine REA cooperatives. Florida Power's service area covers 20,600 square miles in west, northwest, and central Florida, and includes Alachua County as well as 31 other counties.

Florida Power's generating plants have a capability of 1503 mw. Peak load for the system was 1232 mw in 1966. The Corporation is installing a 525 mw unit for service in December 1969, and it is planning to install a 875 mw nuclear-fueled unit for service in mid-1972. Florida Power estimates its annual growth rate is about seven percent or currently 100 mw per year, and it anticipates a peak load of 1321 mw for 1970.

Gainesville's Proposal for Interconnection

Gainesville proposes to establish a physical connection with Florida Power's transmission system by constructing a 115 kv line to the Corporation's Archer Substation on Florida Power's 230 kv line from Fort White to Silver Springs, Florida. Gainesville proposes to install a 230/115 kv step-down transformer with a capacity of 36/60 mva, or, as recommended by staff, of 60 mva. The cost of this installation, including transmission line, transformer, and related equipment, is estimated at $1,500,000 if seven miles of 115 kv line are required, and at double this amount if 14 miles of 115 kv line are constructed all the way to Gainesville's own generating plants. Gainesville plans that the interconnection will be operated closed at all times except when opening is required for safety, maintenance, or repairs.

Gainesville contends that the interconnection will be in the public interest because it will enable the two systems to exchange economy energy, pool their reserves, exchange capacity, and coordinate construction of generation at substantial financial savings to both; that it will place no undue burden upon Florida Power; and that it will not require Florida Power to enlarge its generating facilities. Florida Power, on the other hand, asserts that the Commission is without jurisdiction to act on Gainesville's application, but it adds, without waiving its legal position, that it will be agreeable to a voluntary connection under conditions which will safeguard its service area, protect it from wasteful competition, and assure payment of reasonable compensation for its services. As of this date, Gainesville and Florida Power have not been able to reach an agreement on the conditions proposed by Florida Power.

The Question of Jurisdiction

Florida Power maintains that Gainesville, as a municipal corporation, is not a person within the meaning of Section 202(b) of the Act,

and that the Commission therefore has no authority to order the proposed interconnection. We find no merit in this argument which plainly is based upon an incorrect interpretation of the meaning of Section 202(b). Florida Power's contention is similar to arguments which were previously raised and were rejected by us in *Shrewsbury Municipal Light Department* v. *New England Power Co.*, Opinion No. 438, 32 FPC 373 (1964), affirmed, *sub nom.*, *New England Power Co.* v. *Federal Power Commission*, 349 F. 2d 258 (CA1-1965); *Crisp County Power Commission* v. *Georgia Power Company*, Docket No. E-7190, Tentative Opinion No. 508 (1966); *City of Paris, Kentucky* v. *Kentucky Utilities Co.*, Opinion No. 525, 38 FPC 269 (1967), remanded on other grounds in *City of Paris* v. *Federal Power Commission*, 399 F. 2d 983 (CADC-1968). The Examiner correctly denied Florida Power's motion to dismiss.

The Basis for Interconnection

The statutory provisions which govern this proceeding are those set forth in Section 202(b) of the Federal Power Act. This section provides that the Commission may order an interconnection when it finds that such action is necessary or appropriate in the public interest, and when it also finds that no undue burden will be placed upon the public utility affected by the order. The Commission's authority is specifically limited by two qualifications: (1) it shall not compel the enlargement of generating facilities for the purpose of the interconnection order; and (2) it shall not compel the affected public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

Applying these standards, this record affirmatively shows that the proposed interconnection between Corporation and Gainesville is desirable and in the public interest. Each system will gain financial and engineering benefits from the interconnection. The record also shows that the ordered interconnection will not place an undue burden upon Florida Power, will not require the Corporation to enlarge its generating facilities, and will not impair Florida Power's ability to render adequate service to its customers. Our reasons are set forth in detail hereafter.

In addressing them we deem it important at the outset to emphasize a basic distinction which was not articulated by the Examiner but is central to our analysis. We refer to the initial step of evaluating the electrical resources to be operated under interconnected conditions and as a part of that process to distinguish those factors which involve system electric reliability or the capacity to serve, from marketing or pricing policies which a utility may adopt in selling electric power

and energy in bulk at the wholesale level. These differing considerations tend to be obscured in the opposing economic arguments advanced by Florida Power and Gainesville with respect to their proposed terms and conditions for operating in parallel. Hence, the restatement of the specific contentions of the parties, without more, creates difficulty in understanding the resolution which we make of one of the major disputes in this case: Florida Power's request for a stand-by charge to Gainesville equal to $3.08 times the installed capacity of the City's largest generating unit. As a part of our overall assessment of the benefits and responsibilities of Gainesville and Florida Power in operating under interconnected conditions, we have evaluated their respective electrical resources, including the generating units of both and the effect of adding Gainesville as an additional point of connection upon Florida Power's system.

As a general proposition we note that whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network.

Here the City and Corporation agree that an electrical interconnection should be established. Their basic differences reflect a series of economic and financial considerations; chiefly, what operating responsibilities each should bear, and what charges should be assigned to each system.

Uses of the Proposed Interconnection

All parties agree that the contemplated interconnection would be used initially as follows: for purposes of sharing generating reserves between Florida Power and Gainesville; to facilitate the exchange of hourly non-firm economy energy transfers between the two systems; for weekly or other short term purchases of electrical capacity and

related energy by the Corporation or the City; to permit either system to supply to the other replacement energy during periods of scheduled outage for equipment maintenance purposes; and to meet system electric needs during emergency outages of operating equipment of the City or Florida Power.

The degree to which these various types of service will be utilized by either party is a matter for decision by personnel of Florida Power and Gainesville. Electrical flows between the systems to complete economy energy transactions, short term sales of electric capacity and related energy, maintenance replacement energy and emergency service will be controlled by the system dispatchers.

In addition to schedule transfers between Florida Power and Gainesville, there will be non-scheduled or inadvertent flows through the proposed interconnection. These flows will be instantaneous and occur as generating sources and connected electric loads shift. Depending upon the originating cause they may be in the direction of Florida Power or in the direction of Gainesville.[2] As in the case of scheduled flows, the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either direction is the electrical capacity of the facilities to be installed between the Company and City, 60,000 kva.[3]

Uses of System Generating and Transmission Facilities

Under the terms and conditions of the interconnection as specified in this Opinion and order, each system (Florida Power and Gainesville), will be responsible for its own generating capacity and reserve requirements.

We accept and approve the Examiner's conclusion as to the installed and operating reserves of Gainesville and Florida Power. As expressed in this Opinion, we are satisfied that an appropriate basis has been shown for evaluating Gainesville's generating resources and for assigning to the City a reserve responsibility. Briefly, they are those

[2] Flows in either direction may reflect occurrences on the Florida Power or Gainesville systems, the systems of other members of the Florida Operating Committee with which the Corporation interconnects, or the systems of utilities operating outside the State of Florida which are electrically connected with Florida Power. Presently, approximately 94 percent of the total installed generating capacity of the Nation's electric utilities is interconnected and operates in electrical synchronism, including members of the Florida Operating Committee.

[3] Various briefs of Florida Power denominate these inadvertent transfers as instantaneous emergency service. They are urged as a principal justification for the Corporation's requested "standby charge" of $3.06/kw up to the capacity of the City's largest generating unit. Gainesville does not seek to apply any such charge against the Company. Florida Power does not assess a similar charge against any other system with which it interconnects, nor does any other member of the Florida Operating Committee. Indeed, the staff's review of pooling agreements and bilateral arrangements between large and small systems described in the record did not reveal any other example of such a charge.

requirements which apply to Florida Power as a member of the Florida Operating Committee, and those which the Corporation applies to itself by reason of its utility operating practices.

As set forth in finding (7)(a), Gainesville is required to own or secure from others generating capacity equal to or greater than 115 percent of the City's estimated annual peak hour demand. Under finding (7)(c), Gainesville must maintain ready reserves up to a limit of 15 percent of the City's estimated annual peak hour demand and up to a limit of 10 percent of that demand for spinning reserves. In the light of current reserve practices being followed by Florida Power and other members of the Florida Operating Committee, these requirements will insure that Gainesville discharges its utility service obligations to provide sufficient generating capacity and resources, installed and operating, to supply the needs of its utility consumers.

Following completion of the proposed interconnection, Gainesville's transmission facilities (principally the 115 kv line to be constructed from the City's existing circuits to the point of interconnection at Florida Power's Archer Substation) will function as a means of interconnecting the City's system with that of Florida Power. Florida Power's transmission network functions, and will continue to function, as a means of interconnecting the Corporation's own generating, purchased power and interchange sources and for delivering power to the Corporation's load centers. After connection, Gainesville will become an additional interchange power source on that network.

Compensation

Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection. There will be no direct facilities cost to Florida Power. Depending upon final construction plans, the City's capital costs for this purpose will be in the order of $3,000,000. This investment will be required for about 15 miles of 115 kv transmission from Florida Power's Archer Substation to the City's generating station including transformation facilities at both ends.

Insofar as the proposed interconnection is used for economy energy, maintenance replacement energy and emergency service, we adopt the types of compensations (financial payment or return in kind) to Gainesville and Florida Power as set forth in the Examiner's decision and findings (7)(b), (d), (e) and (g)(1) below. The parties do not object to the Examiner's decision in these respects.

Gainesville and Florida Power both filed exceptions to the Examiner's finding in paragraphs (7)(f) and (7)(g) that scheduled electric service shall be paid for at the rate of $.08 per kw. per day. Gainesville maintains that the rate should be $.05 per kw per day for

both parties. Florida Power states that it is willing to sell to Gainesville at the rate of $.05 per kw per day, but it contends that it should pay Gainesville less than $.05 per kw per day because Gainesville's total fixed charges are lower on a percentage basis than Florida Power's. Upon the showing of this record, we find that the rate of $.05 per kw per day is appropriate for both parties.

We note that one responsibility of interconnected operation has not been specifically mentioned in the Examiner's initial decision. Florida Power and the other members of the Florida Operating Committee each incur annual costs associated with providing frequency regulation for its own control area. Until such time as Gainesville installs an interconnection with another member of the Florida Operating Committee, Gainesville will be within the control area of Florida Power. Staff testified that it would be appropriate for Gainesville to make an annual payment to Florida Power which would represent its proportionate contribution toward Florida Power's annual costs for providing regulation in the control area and that such annual payment should be terminated when Gainesville installs tie-line bias control equipment in its own system and thereby assumes responsibility for regulation of its own control area. We agree. Accordingly, Florida Power will be directed to submit a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make its own determination of such annual payment after receiving the views and supporting calculations of each party.

These charges for services, of which either party may avail itself,[4] will adequately compensate both Florida Power and Gainesville in providing the services. The reserve capacity which we are requiring Gainesville to maintain will assure that Gainesville does not unduly burden Florida Power. The record in this case demonstrates that Gainesville will place no disproportionate burden or reliance on the facilities of the Corporation and thus should not be penalized either in terms of greater reserve capacity requirement than that carried by the other systems in the coordinating area or in terms of a demand charge.

The Standby Charge

Under present conditions Florida Power's request for a standby charge would impose an annual payment approximating $150,000 upon

[4] We emphasize that in this particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other.

Gainesville. The Examiner rejected Florida Power's recommendation and in lieu thereof proposed that the total operating benefits in dollars received by each party by reason of the interconnection shall be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference shall be made by the party receiving the greater benefit to the party receiving the lesser benefit.

Florida Power excepted to the failure of the Examiner to approve its request for a demand charge of $3.08 per kw per year, multiplied by the 50,000 kw capability of Gainesville's largest generator, but generally found the Examiner's 50-50 split proposal satisfactory, provided that the parties could overcome the administrative difficulties expected to be encountered in computing the annual savings in dollars. Gainesville and staff, on the other hand, filed exceptions to the Examiner's proposed 50-50 split of benefits. Gainesville argued that such a procedure would be too vague and general even when applied only to the so-called "operating benefits," and in any event could not be applied to all of the types of benefits possible. Staff contended further that the Examiner's proposal was unwarranted and inappropriate; that such proposal could not be justified as a substitute for Florida Power's emergency demand charge; that the difference in operating benefits to the parties from the interconnection would not be sufficient to warrant the condition; and that the proposal was not consistent with prevailing industry practice.

We agree with Gainesville and with staff that the record in this proceeding does not establish any satisfactory justification for the imposition of a per kw demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate.

The reasoning of both Florida Power and the Examiner is inconsistent with what we have determined to be the appropriate analysis of the basic issues here presented: sharing the responsibilities of interconnected operations. As we have explained, that sharing must be based upon, and follow the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive. Benefits received in any given situation may approximate these responsibilities or they may not. In the course of negotiation of voluntary pooling arrangements, benefits received may, on occasion, serve to offset burdens imposed in determining the appropriate charge for particular services rendered or facilities supplied. But where, as here, the cost of providing such services and facilities and the appropriate charges therefor have equitably been determined after a careful analysis and apportionment of the burdens and responsibilities of each party, there is no basis for any further consideration of relative benefits as proposed by the Examiner.

The evidence before us shows that Gainesville will be contributing its proportionate share of instantaneous emergency service and installed generating capacity, including reserve capacity.

Moreover, the specific type of demand charge requested by Florida Power, namely, the imposition of a charge based upon the size of Gainesville's largest generating unit, would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units. Without such a demand charge, Gainesville could participate more fully in coordinated planning including staggered construction with Florida Power and other systems in Florida to the mutual benefit of all such systems.

If we were to appraise Florida Power's request for an annual standby charge in terms of a "splitting of the benefits" test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits, and corporate financial savings.

The financial benefits are those which could result from coordinated planning and more intensive utilization of existing generating resources. Savings from coordinated planning of new facilities might involve deferral of future generating units or revisions in power supply contracts with other systems. As to the electrical operating benefits, this record shows that the City will have an additional 60,000 kva energy source continuously connected to the City's distribution circuits. For the Company, the interconnection will add an additional energy source to its network in a geographic area where the Company has a substantial load (customer demands), but does not have generating plants of its own. Because of that, the expected benefit to Florida Power may be very substantial since the governors have a faster rate of response setting than Florida Power's. Also of great importance to Florida Power is the improved system reliability which the Company will gain through the proposed intertie. That is shown in studies submitted by staff from engineering analyses of loss of load probabilities. They establish that the interconnection will have the effect of improving the reliability of Florida Power's system.

Turning to the particular facts which comprise Florida Power's principal justification for its $3.08/kw standby charge, this record shows a unit cost calculation based upon an assumed use of the Corporation's transmission network for service reliability and emergency back-up service and an assumed use for bulk power deliveries to the Corporation's own utility load centers. The Corporation estimates that its gross investment in its transmission network will total $65,000,000 as of 1970, and that 60 percent of this amount or $39,000,000 should

be allocated to system reliability and emergency back-up service. It calculates the annual fixed charges on this $39,000,000 at $5,850,000. It states that Gainesville's proportionate share of such annual charges, at the rate of 15 percent of allocated investment, and assuming a combined load for the two companies of 1,900 mw in 1970, will be $3.08 per kw.

Florida Power's proposed additional standby charge for transmission availability (amounted to $150,000 per year), must be evaluated against the background of its failure to include a comparable charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected. In these circumstances, Florida Power plainly bears the burden of justifying an apparently discriminatory imposition in this one instance. The evidence falls far short of meeting this burden. The Corporation's allocation of 60 percent of its transmission system investment to service reliability and emergency back-up service is not supported by any engineering analysis as to its appropriateness. This allocation is, in fact, disputed by staff which claims that Florida Power failed to give adequate consideration to certain advantages which the Corporation enjoys from its transmission system such as bulk energy deliveries, and the savings resulting from reduced capacity and energy costs made possible by the installation of larger generating units and by the maintenance of lower reserve requirements. Furthermore, Florida Power did not adduce any operating or engineering facts to establish that Gainesville derives any special operating benefit by reason of Florida Power's interconnecting transmission network apart from that gained by any individual system which is tied into an interconnected network. The affirmative showing of the record in this proceeding is that the proposed interconnection will provide important instantaneous emergency service to Florida Power from Gainesville.

Insofar as Florida Power's investment in its transmission system is concerned, we deem it appropriate to point out that the proposed interconnection will be accomplished at no direct cost to Florida Power. The cost to Gainesville, on the other hand, will approximate $3,000,000.

The Examiner's Condition for Interconnection

A competitive situation exists between Gainesville and Florida Power for customers in the Gainesville area. Gainesville also competes with the Clay Electric Cooperative (Clay Electric). During the hearings evidence was submitted showing that since 1962 Gainesville has expanded its service into areas served by Florida Power and by Clay Electric, first by the annexation of adjacent territory to treble the size of the City, and second by the extension of its distribution lines

beyond its new city limits into Alachua County. Gainesville negotiated a settlement with Clay Electric whereby it acquired the latter's facilities and customers within the annexed area, but it did not negotiate a similar agreement with Florida Power, and that Corporation continues to serve 22 of its customers within the new city limits. Florida Power also provides retail service to the University of Florida at Gainesville, and is now under contract to continue such service until 1976.[1] Gainesville's extended distribution lines in certain instances duplicate and parallel those of Florida Power and Clay Electric. Prior to the hearings Gainesville constructed 16.2 miles of such duplicating lines at a cost of $165,000, resulting in annual fixed costs and operating expenses of $16,550.

Florida Power and Gainesville accuse each other of engaging in a wasteful duplication of service. On September 14, 1967, Florida Power petitioned the Examiner to reopen the proceeding for the purpose of submitting additional evidence showing that Gainesville was intensifying its competitive efforts. The Examiner denied the petition to reopen, stating that the allegations were cumulative to facts already in the record. Subsequently, on July 8, 1968, Florida Power petitioned the Commission to reopen the proceeding for the purpose of taking additional evidence showing that since the conclusion of the hearing, Gainesville has constructed approximately 19 miles of distribution lines paralleling and duplicating those of Florida Power, that these lines will serve approximately 35 new customers, chiefly residential and commercial users in new buildings under construction, and that Gainesville, has also purchased the Westward Utilities, Inc., a private utility which formerly provided water and sewerage services to electric customers of Florida Power. For the reasons set forth below we are of the opinion that Florida Power's petition of July 8, 1968, does not set forth grounds which warrant the reopening of this proceeding.

Florida Power argued before the Examiner that it should not be compelled to interconnect with Gainesville under circumstances whereby the advantages which Gainesville would obtain from the interconnection could be used by Gainesville to assist it in continuing its competition against Florida Power. The Examiner accepted Florida Power's argument to the extent that he found it to be in the public interest that the order for interconnection should be qualified by a condition precedent compelling the parties first to reach an agreement whereby the further duplication of facilities will be avoided.

[1] The University of Florida was served by Gainesville prior to 1930. It was served by Florida Power from 1930 to 1935, and again by Gainesville from 1935 to 1948. In 1948 Gainesville advised the University that it could no longer serve it, and the University then resumed service from Florida Power.

Gainesville and staff filed exceptions to the Examiner's condition. They assert that the imposition of the condition is tantamount to a denial of the interconnection because Florida Power will be placed in a position to insist upon territorial limitations which Gainesville will not accept. Gainesville and staff maintain that the benefits from the interconnection will far outweigh any possible detriment resulting from competition at the retail level, and they contend that the question of a territorial agreement should be left for future resolution by the parties after an interconnection has been accomplished. Staff further points out that the interconnection may readily provide the mechanism for decreasing the duplication of distribution facilities of the parties, whereas the continued electrical isolation of Gainesville will compel the City to plan and build larger generating units than it can utilize at all times to capacity, thus forcing it into more aggressive competition for new customers.

Florida Power generally supports the Examiner's condition and states that under Florida law it is not expected to serve a competitor. Florida Power adds that it is willing to interconnect voluntarily with Gainesville and to sell and exchange capacity and energy on terms and conditions substantially in accord with those set forth in the Examiner's additional findings and conclusions. It proposes a territorial agreement with Gainesville whereby it will turn over to Gainesville 22 residential customers and an ice plant now served by it within the City, and it offers to withdraw its service from any suburban area where Gainesville had constructed parallel distribution facilities as of the time of the hearings. Florida Power intends to continue its service to the University of Florida, and it asks that Gainesville respect the integrity of its revised service area for a period of 15 years.

In presenting their cases on this point Gainesville and Florida Power have relied extensively on decisions rendered by state and federal courts in related and separate areas of law. Notwithstanding such reliance upon precedent in the fields of state utility law, railroad law, and antitrust law, the standards which control are those set forth in Section 202(b) of the Act, which we discussed above.

The Commission is of the view that the competition between Gainesville and Florida Power, although understandably a matter of some annoyance to Florida Power, is not currently of major importance. The record before us does not show that this competition, either at the present time or in the near foreseeable future, will impose any undue burden upon Florida Power, nor will it impair the stability or prosperity of Florida Power's $500,000,000 system. We find merit in staff's view that the interconnection may provide the opening mechanism for a program of cooperation between Gainesville and Florida Power,

a program which eventually may enable the two systems to reconcile their differences and accomplish the elimination of wasteful duplication. We are also persuaded by staff's argument that the continued isolation of Gainesville will lead only to more aggressive competition on its part.

The foregoing discussion leads us to conclude that the public interest will not be served by the attachment of a condition precedent to an order for interconnection which may prevent the interconnection from being accomplished. The Examiner's condition involves the undesirable risk that it can be self-defeating in that it may enable the intransigence of the parties, who thus far have not been able to reach an agreement on this matter, to prevent the interconnection from being consummated. The issue of overriding significance here is that it is in the public interest that the electrical isolation of Gainesville be ended as quickly as possible. The parties do not disagree.

The arguments concerning competitive activities of Florida Power and Gainesville in their retail operations are basically economic contentions. Moreover, they bring into focus public policy considerations of the State of Florida—single or multiple power sources operating within specific retail service areas. Since we cannot resolve the question of whether a given area of Florida shall be served by one, two, or three utilities, we see no reason why the result of retail operations of competing systems should control our judgment on whether bulk power facilities should be interconnected and operated coordinately. The regulatory jurisdiction conferred upon this Commission pursuant to Part II of the Federal Power Act does not extend to the regulation of retail rates, charges and services. That is expressly recognized as a matter of State concern. We are directing our Secretary to forward copies of this opinion to the Governor of the State of Florida, and to the Chairman of the Florida Public Service Commission. In doing so, we bring to their attention the showing of this record as to the duplication of retail service lines and competing retail electric operations of Florida Power and Gainesville.

Other Exceptions

We find no merit in Florida Power's exception to the Examiner's ruling denying that Corporation's motion to strike staff testimony and exhibits relating to a showing that Florida Power and the other Florida electric utilities with which it is interconnected may benefit from the sale and exchange of firm power on a seasonal basis with the Southern System. The record shows that the question of seasonal diversity exchanges with the Southern System was introduced by Florida Power's own witness, and that the testimony submitted by staff's witness

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was appropriate in furnishing perspective to the arrangement on diversity exchange between the Southern System and Florida Power.

We further do not agree with Florida Power that the Examiner erred in failing to provide that Florida Power may purchase all or part of the 115 kv transmission line to be built by Gainesville so as to enable Florida Power to serve its customers within its service area. We do not find adequate record support for Florida Power's contention. On the basis of the evidence before us, Florida Power's concern on this particular issue appears to be premature and conjectural.

We note that the Examiner did not adopt the proposal by the staff that Gainesville and Florida Power be directed to set up a coordinating committee. We believe there is substantial merit and usefulness in such a committee and we therefore direct the parties to set up a coordinating committee to represent the parties in all matters arising from operations under the interconnection as hereinafter directed.

The Complaints Under Sections 205, 206, and 10 of the Act

The Examiner denied Florida Power's motion to dismiss Gainesville's cause of action under Sections 205 and 206 of the Act, wherein Gainesville alleged that Florida Power was discriminating against it by interconnecting with other electric utility systems and by refusing to interconnect with Gainesville. The Examiner ruled that a Commission order directing Florida Power to connect its facilities with those of Gainesville rendered moot Gainesville's cause of action under the above sections. Florida Power takes exception to the Examiner's ruling, stating that Sections 205 and 206 do not confer any authority upon the Commission to order the two systems to interconnect, and adding that the evidence of record does not establish any violation by Florida Power of these sections. We do not find Florida Power's argument on this point well founded. As staff correctly explains, the Commission has authority under Sections 205 and 206 to review the alleged practices of Florida Power which Gainesville asserted tended to discriminate against the City. Without passing at this time on the question as to whether or not Gainesville's complaint is well founded, it is sufficient for the purposes of this proceeding for us to find that the interconnection which we have ordered will remedy the situation which gave rise to Gainesville's complaint. The complaint before us on this particular point is thus indeed rendered moot.

The Examiner also denied Florida Power's motion to dismiss Gainesville's cause of action under Section 10 of the Act. Florida Power alleged lack of jurisdiction and failure of proof. The Examiner found that the evidence of record in this proceeding did not establish violation by Florida Power of Section 10(h) of the Act as alleged in

Gainesville's complaint. Florida Power asserts error on the part of the Examiner, claiming that the two rulings above are inconsistent, and it argues that a question of a violation of Section 10(h) of the Act is a matter for the courts rather than for the Commission. We do not agree with this contention. The Commission plainly has authority to ascertain whether a jurisdictional utility's wholesale rate arrangements are in violation of Section 10(h). See *Pacific Northwest Power Company, et al.*, Opinion No. 418, 31 FPC 247 at 274 (1964). The Examiner's disposition of Gainesville's complaint under Section 10 is supported by the record, and we approve his action.

The Commission further finds:

(1) Florida Power Corporation is a public utility within the meaning of Section 201(a) of the Federal Power Act.

(2) The Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville), each is a "person" within the meaning of Section 202(b) of the Federal Power Act.

(3) It is necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act, that the Commission order Florida Power to establish physical connection of its transmission facilities with the facilities of Gainesville at the Archer substation location as set forth in Finding (4) below, to sell energy to and exchange energy with Gainesville upon the terms and conditions as ordered below. Such sale and exchange of energy will not place any undue burden upon Florida Power, nor require Florida Power to enlarge its generating facilities for such purpose, nor impair its ability to render adequate service to its customers.

(4) It is necessary and appropriate in the public interest that a physical connection be established on the transmission system of Florida Power at the location known as the Archer Substation on the Florida Power Suwannee-Silver Springs 240 kv transmission line. Such physical connection shall include the equipment necessary for a 240/115 kv transformation, in accordance with recognized engineering practice. Unless otherwise provided by written agreement of Florida Power and Gainesville, the facilities for such physical connection shall conform substantially with the facilities described in Exhibit 3. Gainesville shall provide or compensate Florida Power for providing the facilities necessary for a 60 mva interconnection at Florida Power's Archer Substation, and also shall provide a 115 kv transmission line and facilities for connecting same to the Gainesville system. The facilities shall be substantially as described in Exhibit 3, modified as necessary for a minimum of 60 mva capacity.

(5) Gainesville shall own, construct, and service the 115 kv transmission line and its termination facilities on the Gainesville system.

Construction, service, and ownership of the physical interconnection facilities at the Archer Substation shall be as agreed upon by the parties.

(6) Florida Power and Gainesville shall proceed to construct in the shortest reasonable time the interconnection facilities referred to in Findings (4) and (5) above.

(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spinning and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfers: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph (7) (g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph (7) (d) above). Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph (7) (f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other

for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph (7)(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph (7)(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind, shall be be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(8) Gainesville shall reimburse Florida Power for the annual costs associated with providing frequency regulation for its control area until such time as Gainesville installs tie-line bias control equipment in its own system and assumes responsibility for regulation of its own control area. Florida Power is directed to submit to the Commission a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make the determination of the annual payment due from Gainesville to Florida Power after receiving the views and supporting calculations of each party.

(9) Gainesville and Florida Power shall establish a coordinating or administrative committee to represent the two parties in all matters arising under the interconnection arrangements hereinafter directed. The coordinating committee shall establish an operating subcommittee to be responsible for the day-to-day operations such as operation and maintenance schedules, control and operating procedures, and supervision of accounts.

(10) Within 60 days from the date of this Opinion and order Florida Power shall submit to the Commission for consideration a proposed rate schedule reflecting the terms and conditions of the interconnection as set forth in the Findings above.

(11) Florida Power shall report to the Commission the date of commencement of service provided for herein within 30 days following the commencement of such service.

(12) This Commission's direction that Florida Power connect its facilities with those of Gainesville, as set forth in the Findings above.

renders moot the allegations in Gainesville's complaint that Florida Power is violating Sections 205 and 206 of the Federal Power Act by interconnecting with other electric utility systems and discriminating against Gainesville by refusing to interconnect with Gainesville.

(13) The evidence of record in this proceeding does not establish violation by Florida Power of Section 10(h) of the Federal Power Act as alleged in Gainesville's complaint.

(14) Apart from the exceptions to the Examiner's initial decision which were expressly granted in the foregoing Opinion and Findings, the exceptions to the Examiner's decision should be denied.

(15) Florida Power's petition of July 8, 1968, to reopen the proceeding for the purpose of taking additional evidence should be denied.

The Commission orders:

(A) Florida Power shall establish connection with its facilities with those of Gainesville as described in Finding (4), *supra*, as soon as Gainesville completes the transmission lines and other facilities necessary to such interconnection, and thereafter Florida Power shall sell, supply, and exchange energy to and with Gainesville under the terms and conditions prescribed in Findings (7), (8), and (9).

(B) Florida Power shall notify this Commission when the interconnection ordered in Paragraph (A) is established and operative.

(C) The Examiner's decision to the extent not inconsistent herewith is hereby adopted as part of this Opinion.

(D) Florida Power is ordered to comply with the directives set forth in Findings (8), (9), (10), and (11).

(E) Exceptions not expressly granted are hereby denied.

(F) Florida Power's petition of July 8, 1968, to reopen the proceeding for the purpose of taking additional evidence is denied.

Commissioner Bagge *concurring.*

BAGGE, *Commissioner, concurring:*

I cannot join in this opinion without expressing my concern for the irrational behavior engaged in by the parties to this proceeding. A rational society cannot tolerate the economic waste which has been documented on this record. If regulation is to serve any function at all, it should, at least, preclude meaningless duplication.

OPINION NO. 550-A

GAINESVILLE UTILITIES DEPARTMENT AND CITY OF GAINESVILLE, FLORIDA v. FLORIDA POWER CORPORATION, DOCKET NO. E-7257

MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING

(Issued January 2, 1969)

Syllabus

1. *Rejecting* argument that ordered interconnection will prove to be a one-way street with all benefits flowing from public utility to municipality, Commission *observes* that interconnection will permit a reciprocal exchange of benefits to mutual advantage of both systems. P. 5.
2. Commission *makes* certain modifications in prior Opinion and order and in all other respects *denies* application for rehearing.

INTERCONNECTION, RELIABILITY, SALE OF ELECTRIC ENERGY, TRANSMISSION FACILITIES, COMPETITION, PRACTICE AND PROCEDURE (REHEARING)

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

O'CONNOR, *Commissioner:*

By Opinion No. 550 and order dated November 5, 1968, 40 FPC 1227, the Commission found that it was necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act to order the Florida Power Corporation (Florida Power or Corporation) to establish physical connection of its transmission facilities with the facilities of the Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville or City), and to order Florida Power to sell energy to and exchange energy with Gainesville under certain specified terms and conditions.

On December 3, 1968, Florida Power filed an Application for Rehearing of the above Opinion and order, stating that the Commission had erred (1) in finding jurisdiction; (2) in evaluating the basis and uses of the proposed connection; (3) in prescribing compensation or financial payments; and (4) in failing to condition the interconnection upon the prior agreement of Gainesville to eliminate and avoid wasteful duplication of facilities.

Upon consideration of the application of Florida Power and the numerous arguments set forth therein, the Commission finds that the grounds advanced for rehearing are not persuasive. These grounds are for the most part restatements, often in the same or similar terms, of arguments submitted by Florida Power earlier in this proceeding before the Examiner and before the Commission. The arguments so restated include, among others, all of the arguments on the jurisdictional question; all of the allegations to the effect that Florida Power

will gain no financial or engineering benefits from the interconnection; the assertions that Florida Power is entitled to charge Gainesville a demand charge of $3.08 per kw per year times the 50 mw capability of Gainesville's largest unit, and that without provision for such a demand charge the Commission's order will constitute an unconstitutional taking of Florida Power's property; and the arguments relating to the necessity for a conditioned interconnection order under which Gainesville will agree to eliminate and avoid wasteful duplication of facilities. The above contentions were all thoroughly considered and were rejected by the Commission in the preparation of Opinion No. 550 and order.

In addition to the above, Florida Power advances certain grounds for rehearing which call for specific comment. Thus, throughout its application, the Corporation emphasizes the contention that Gainesville will not be able to render any service of significant value to Florida Power. Upon consideration of this argument we find that Florida Power has greatly underestimated Gainesville's capacity to be of service to the Corporation. Because of its electrical isolation, Gainesville has maintained a very large reserve capacity in relationship to its peak load. In 1965 its peak load was 51.1 mw, and its reserve capacity was 57.3 mw or 112.1 percent of peak demand. Although the purpose of this interconnection proceeding is to enable Gainesville to lessen its need for self-reliance, Gainesville's reserve capacity will continue to be large even after interconnection. The staff's witness has testified that during the ten year period 1970-1979, Gainesville's average minimum reserves at the time of Florida Power's annual peak hour demand will be 48 percent. According to staff's computations, Gainesville will be able to deliver, if there will be sufficient interconnection transmission facilities, anywhere from 60 mw to 100 mw to Florida Power during certain periods in January, April, and September 1970. This prediction that Gainesville will be able to furnish capacity of this magnitude to Florida Power plainly refutes Florida Power's assertion that the interconnection will prove to be a one-way street with all the benefits flowing from the Corporation to the City. The Commission is satisfied that the interconnection will permit a reciprocal exchange of benefits to the mutual advantage of both systems.

The above discussion as to Gainesville's future reserve capacity furnishes the ready answer to Florida Power's contention that the Commission erred in finding at page 1234 of Opinion No. 550 that "the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either direction is the electrical capacity of the facilities to be installed between the Company and City, 60,000 kva." Contrary to Florida Power's assertion, the evidence does establish that

Gainesville will have electrical resources to permit a transfer to Corporation of 60,000 kva. Moreover, despite Florida Power's statement that the proposed connection could carry a 100 percent overload, thereby subjecting the Corporation's system to a transfer of 120,000 kva to Gainesville, it is plain that the load carrying capability of the connection will be limited by Gainesville's transmission line which is to be designed for 60,000 kva. According to the record, such line may carry an overload up to 80,000 kva, but only for short periods of time during cold weather.

Staff's studies of Gainesville's future reserve capacity also serve to refute Florida Power's allegation that there is "no scintilla of evidence" to support the Commission's finding that Gainesville will become an additional interchange power source on Florida Power's network after the interconnection is consummated. Similarly, staff's studies rebut the Corporation's assertions regarding the insignificance of Gainesville's anticipated capacity contributions.

Florida Power takes issue with the Commission's findings that the Corporation agrees that the electrical interconnection should be established, and that the Corporation will be able to make some use of such interconnection. Florida Power argues that it has consistently maintained that the connection is not necessary and is not appropriate in the public interest. Florida Power's assertions on this point are not consistent with its prior pleadings. In its opening brief before the Examiner, the Corporation stated that given the terms and conditions which it requested, it "is agreeable to a voluntary connection with Gainesville", that it proposes scheduled electrical service between the two systems, and that it is agreeable to seasonal exchange on a voluntary basis by mutual agreement of the parties. Plainly, the Corporation's assertions of error are not persuasive. We deem it appropriate, however, to modify our findings of the Corporation's position of agreement with qualifying language showing that Florida Power's position is subject to the conditions which it set forth in its pleadings. We also find it appropriate to delete from Opinion No. 550 the final sentence of the first full paragraph on page 1242, where we indicated that Florida Power was not in disagreement with our position that the "issue of overriding significance here is that it is in the public interest that the electrical isolation of Gainesville be ended as quickly as possible." Florida Power evidently does not agree with this view.

Florida Power disputes our findings at pages 1231, 1235, and 1239 of Opinion No. 550 that Gainesville's capital cost for the interconnection will approximate $3,000,000. Florida Power claims that Gainesville's cost will be only $1,500,000, and that any costs above this amount will represent expenditures required for Gainesville's internal purposes. The record shows that the consulting engineer retained by

Gainesville testified that the investment for transmission facilities required to interconnect Gainesville's generating plant with Florida Power's system would be double the figure of $1,500,000. In light of the above explanation, we find that the expenditure of $3,000,000 will be required in order to enable Gainesville's generating capacity to flow into Florida's system.

Florida Power asserts that the Commission erred in finding that the interconnection will add an additional energy source in an area where Florida has no generating plant. The Corporation states that it now has three energy sources to supply its load in the Gainesville area and that it does not need a fourth. Florida Power's Form 12 for 1965 shows that the Corporation's Suwannee Plant is the closest generating source to its Gainesville load center. This plant is more than 75 transmission line miles away from this load center. The next closest plant is the Inglis Station which is more than 80 transmission line miles away. Florida Power's three energy sources are connected to the Gainesville load area by 69 kv transmission lines. According to staff, two of these lines serve other loads and could be vulnerable to outages. We agree with staff's position that the connection with Gainesville's generating resources would upgrade service reliability to the Corporation's customers in the Gainesville area.

Florida Power further contends that we have failed to give proper consideration to the fact that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity or mutuality of an interconnection. Florida Power refers to its agreement with the Florida Power & Light Company whereby the latter company paid all of the fixed charges and administrative costs of a connection until it became mutually beneficial. It also refers to its agreement with the Gulf Power Company to whom Florida Power is now paying a fee for a connection which is not mutually beneficial. We have considered both of the cited cases and we do not find their precedent applicable here. In the Florida Power & Light Company situation, that company paid for the fixed charges of a circuit for one year when it required the use of the line and when Florida Power did not. In the Gulf Power Company case, Florida Power paid Gulf Power for the use of a line which the latter company constructed for Florida Power's needs and not for its own. Neither of these cases resembles the Gainesville situation in that Gainesville proposes to construct at its own expense transmission facilities which will be mutually beneficial to itself and to Florida Power. Florida Power also refers to a new connection which it voluntarily negotiated with another system after the close of the hearing under an agreement whereby the other system will pay Florida Power for emergency service $3.08 per kw per year times the capacity of the

other system's largest unit. No probative significance as to a generally-established industry practice can be attached to this one instance. Moreover, there is no assertion that the new connection and the Gainesville situation are substantially similar from a factual standpoint.

Consideration has been given to Florida Power's statement that we erred in directing the Corporation to submit a proposed rate schedule for providing frequency regulation in Gainesville's control area until Gainesville installs tie-line bias control equipment. Florida Power contends that the Gainesville system and load will be so small that any charge Florida Power might make for adding Gainesville to Florida Power's control area for frequency regulation will be too insignificant to justify the cost of preparing and administering a rate schedule. In light of this contention, the Commission finds that the submission of the proposed rate schedule shall be made optional at Florida Power's discretion.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the Application for Rehearing filed in this proceeding by the Florida Power Corporation present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 550 and order except as specified below.

The Commission orders:

(A) The first sentence in the second full paragraph on page 1233 of Opinion No. 550 is modified by the following new footnote 1a:

> [1a] The findings made in this opinion which attribute to Florida Power a willingness to interconnect or an agreement as to the suitability of the interconnection are subject to the reservation that Florida Power's expressions of agreement are qualified by the conditions set forth in its pleadings.

(B) The final sentence of the first full paragraph on page 1242 of Opinion No. 550 is deleted.

(C) A new final sentence is added to finding paragraph (8) of Opinion No. 550, as follows:

> In the event that Florida Power elects not to assess Gainesville with any portion of the annual costs associated with providing frequency regulation for its control area, it shall report such determination to the Commission, and the Commission may then waive the above requirements of this paragraph.

(D) Except as provided in ordering paragraphs (A), (B), and (C) above the Application for Rehearing filed in this proceeding is in all respects denied.

APPENDIX C

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON FORMAL COMPLAINT
AND APPLICATION FOR INTERCONNECTION

(January 17, 1968)

RENDELMAN, *Presiding Examiner:* On November 22, 1965, the City of Gainesville, Florida, and the Gainesville Utilities Department (hereinafter collectively referred to as Gainesville) filed with this Commission an "Application for Interconnection and Complaint Against Unlawful Actions." Gainesville therein (1) applied for an order, pursuant to Section 202(b) of the Federal Power Act (Act), directing the Florida Power Corporation (Florida Power or the Company) to establish an interconnection with Gainesville and to sell and exchange energy with Gainesville under the same terms and conditions at which it sells and exchanges energy with other electric utilities; (2) alleged that Florida Power's rates, charges, rules and regulations are unlawful and discriminatory in violation of Sections 205 and 206 of the Act, and requested that an order be issued directing Florida Power to desist from such practices and (3) charged that Florida Power has attempted to, or has entered into combinations, agreements, arrangements, or understandings with other utilities to limit the output of electrical energy, to restrain trade, and to fix, maintain or increase prices for electrical services in violation of Section 10 of the Act.

Gainesville operates an isolated electric generating, transmission and distribution system serving retail customers in the City of Gainesville and in the suburban area of the City in surrounding Alachua County. Its generating plant as of the time of this proceeding had an installed name-plate capacity of 101.3 megawatts, consisting of steam units of 44 mw, 22 mw, 16.5 mw, 12.6 mw, 5 mw and a one-mw diesel unit, with a total maximum dependable capability of about 106.4 mw.

The testimony indicates that a new 15-mw gas turbine generator will be added by June 1967, and a second 15-mw gas turbine generator by June of 1968. As of December 31, 1965, Gainesville had some 17,250 customers with a peak load in 1966 of 54.5 mw. Gainesville's average annual load growth is 15.3 percent which, if sustained, will achieve a peak load of 102 mw by 1970. Energy usage has been increasing at the rate of 14.7 percent annually. As of September 30, 1965, Gainesville had a net investment in electric utility plant of $21,104,086, operating revenues of $4,766,721 and a net income from electric operations of $1,182,873.

Florida Power Corporation, whose service territory includes Gainesville and surrounding Alachua County, owns and operates a large bulk power system in 32 counties in west, northwest and central Florida. It has approximately 343,000 retail customers and supplies power at wholesale to 12 municipal distribution systems and 9 REA Cooperatives. Its generating facilities include 8 steam generating plants with a name-plate rating of 1414.8 mw and a maximum dependable output of 1587 mw; a small hydro plant of 8 mw; 7 old inefficient low-pressure units with a combined maximum dependable output of 88 mw on cold standby used only to meet short term winter peaks, with two units having a combined capacity of 65 mw to be added to cold standby by 1970 or 1971. Florida Power has units of 404 mw, 232 mw, 125 mw, 88 mw, 84 mw, and 80 mw, of which the smallest has almost twice the capacity of Gainesville's largest unit. Additionally

scheduled for service in December 1969 is a 525-mw unit and bids are presently being invited on another generator of 550 mw or larger for service in mid-1972. Florida Power's depreciated original cost investment in generation is $150,652,788 and the estimated cost of the unit to be completed is $36,700,000. Its transmission system consists of 410 miles of 230 kv, 1156 miles of 115 kv and 1409 miles of 69 kv. The system delivers power from source of generation to load centers and furnishes system reliability in that it can deliver reserve power from its own system or from interconnections to any point on the system where required in the event of a power loss. As of December 31, 1965 the total depreciated value of Florida Power's backbone transmission network was $53,084,472 of which 40 percent is for normal peak load service for delivery of power to load centers, and 60 percent for system reliability. Peak load for the system was 1282 mw in 1966. Annual growth rate is estimated at approximately 7 percent or 100 mw per year with 1826 mw projected by 1970.

Florida Power is interconnected with other electric systems in Florida by six interconnections with Tampa Electric Co., two with Orlando Utilities Commission, and by interconnections between Tampa Electric and Florida Power & Light Company, Florida Power & Light and Orlando Utilities Commission, and Florida Power & Light and the City of Jacksonville. These interconnections operate at 230 kv, 165 kv or 69 kv, with the higher voltage lines operating closed under free flowing load conditions, thus enabling the five systems to coordinate the operation and maintenance of generating units and to deliver larger blocks of energy during an emergency.

The Florida Operating Committee is composed of the representatives of the five principal interconnected electric systems of Florida.[1] Its primary function is the coordination of the day-to-day operating problems of its members relating to bulk power supply facilities and, *inter alia*, establishes operating reserve requirements for the group as a whole. It also apportions operating reserves pursuant to a formula uniformly applied to each individual member. No planning standard for the determination of installed reserve requirements of the members has been established nor have the members apportioned such reserve requirements among themselves. Despite the absence of any established standard, each member of the Committee is nevertheless enabled to install larger, more efficient generating units and to carry smaller installed reserves than if operating as an isolated system. Florida Power, in addition, has separate bi-lateral contracts with Tampa and Orlando for the purchase of power to coordinate installation and maintenance of units and for back up in the event of an emergency. Seven interstate transmission ties are maintained with Georgia Power Company at 230 kv, 115 kv or 69 kv and two with Gulf Power Company for the mutually advantageous use and exchange of power and for emergency purposes.

Since 1927 Florida Power has maintained distribution lines and has provided service to retail customers in the area to the west and southwest of Gainesville. As of the first half of 1966 Florida Power served an average of approximately 1400 retail customers through its Gainesville substation. Within the city of Gainesville, Florida Power has provided service at retail to the University of Florida since 1948,[2] and on January 1, 1966 executed a new contract for another ten years.

Also serving the Gainesville area to the west, north and east of the city is the Clay Electric Cooperative, a typical rural electric cooperative, which provides service at retail to these rural and suburban areas with power purchased at

[1] Florida Power Corporation; Florida Power & Light Company; Tampa Electric Company; Orlando Utilities Commission; City of Jacksonville, Florida.

[2] Prior to 1930 the University was served by Gainesville; from 1930 to 1935 by Florida Power, and from 1935 to 1948 by Gainesville.

wholesale from Florida Power. With the expansion of the city's boundaries on January 1, 1962, whereby Gainesville tripled its area within city limits by annexation, a number of Clay Electric's customers and 26 customers of Florida Power found themselves within the new city limits. Customers of Clay Electric so affected were transferred to Gainesville by means of a negotiated settlement, but 22 of the 26 Florida Power customers in this area are still served by the Company.

Since the 1962 annexation, Gainesville has expanded its system further into Alachua County beyond existing city limits by the construction of primary distribution lines which duplicate and parallel lines of Florida Power and Clay Electric with resultant direct competition for new customers in that area. Since 1964 the city has constructed approximately 16.2 miles of such duplicating lines and since the close of this hearing has constructed additional lines which further duplicate existing lines of Florida Power along County Road SW 29 and County Road SW 30 in Sections 9, 10 and 11 of Alachua County.[3]

While the manager of Clay Electric testified that he is continually having to investigate complaints that Gainesville is attempting to "pirate" the Coop's customers, competition for existing customers in areas in which there are duplicating facilities is not presently significant. Florida Power and Clay Electric do not directly compete with each other by reason of a workable service area agreement heretofore negotiated between them. Gainesville, however, does compete with Florida Power and Clay Electric for new customers in the suburban areas surrounding the city. Competition is not based on the difference in rates between the parties, but rather on services offered. Gainesville sells what would appear to be a "package deal" in that it will extend water and sewage facilities to customers in surrounding Alachua County only if such customer also commits himself to the purchase of Gainesville's electrical service even though Gainesville's rates for such customers average considerably higher than Florida Power's rates for like service.

A comparison of typical rates shows that Gainesville's minimum bill for retail customers is 30.8 percent higher than Florida Power's rate and correspondingly higher for customers using less than an average of 600 kwh per month, while Gainesville's rates for commercial customers, averaging 375 kwh and 750 kwh per month are 49 percent and 53 percent higher respectively than the Company's rates.

Florida Power has heretofore attempted to meet this type of competition by providing financial assistance to Westward Utilities, Inc., a privately owned water and sewage company that operates in suburban Gainesville unincorporated areas of Alachua County. Such assistance consisted of outright grants totaling $50,000 and a series of mortgage loans since 1964 in an amount in excess of $430,000 with interest at six percent to commence on January 1, 1967. However, no interest payments have been made nor has Florida Power exercised its right to foreclose under the mortgage. Gainesville, since the close of the record in this proceeding, has countered this move by a direct purchase of Westward Utilities and has made repayment of the outstanding loans to Florida Power.[4]

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[3] Florida Power's motion to reopen this proceeding in order to place in the record the facts concerning this further extension of Gainesville's distribution lines and the purchase by Gainesville of a water company previously financed by Florida Power was denied. However, these facts were not denied by Gainesville in its response to the motion.

[4] See fn. 3, supra.

Excluding those duplicating lines constructed by Gainesville since closing the record, the aforementioned 16.2 miles of duplicating lines and facilities represent an investment of approximately $165,000 plus annual fixed costs, operation and maintenance expenses of $16,550.

Gainesville's proposal envisions the establishment of a physical connection with Florida Power's 230-kv line at the Company's Archer substation, the installation of a 230/115 kv step-down transformer with a capacity of 36/60 mva and the construction of seven miles of single circuit 115 kv line to the switchyard of its planned transmission loop at a total estimated cost of $1,503,100. It is intended that the interconnection be closed at all times except when opening is required for safety, maintenance or repairs.

Interconnection among neighboring utilities, both investor and publicly owned, has become a "way of life." It is now axiomatic that there are mutual practical and economic benefits to be derived therefrom. Where, however, there is considerable disparity in the size of the systems involved there is a perhaps understandable indisposition on the part of the larger system to connect with the smaller because the benefits devolving to the smaller system as a result of the connection, as a general rule, far outweigh the advantages, if any, gained by the larger in the absence of any arrangement, financial or otherwise, between the parties to make up for the difference. In the ordinary case the parties are able to negotiate a workable agreement whereby they are able to "live" with each other. Unfortunately, in the instant case, protracted negotiations and innumerable conferences between Gainesville and Florida Power prior to institution of this proceeding have proven fruitless. Gainesville therefore resorts to Section 202(b) of the Act in order to accomplish by direction of the Commission what the parties have been unable to attain by negotiation. Additional conferences during, and even after, the close of the record have similarly yielded no result.

It is the continued and considered opinion of the Presiding Examiner that the principal and real point of difference between the parties, namely, the territorial issue, is singularly amenable to negotiation and that the parties themselves could achieve by a compromise a more sanguine solution of the problem than by resort to the Commission. In the absence of any agreement to date, however, despite the perforce limited persuasive efforts of the Presiding Examiner to effect a settlement during the course of this proceeding, it devolves upon the Commission to seek a solution which will best serve the public interest.

Witnesses for Gainesville, Florida Power and Staff are in agreement that the proposed interconnection is desirable and in the public interest. The testimony shows that the interconnection will make available to Gainesville instantaneous emergency electric service across a closed connection by governor action with a loss in frequency of less than one-half cycle per second, thus providing Gainesville with spinning reserve[8] in the quantity it requires, which it could not otherwise provide by itself to prevent curtailment of load. If Gainesville were to maintain its isolated status it would be required to install duplicating additional generation of its own in order to assure its customers of firm service, although not without some curtailment because of reduction in frequency in the event of loss of its largest unit. Independent maintenance of sufficient installed capacity[9] to carry peak-hour load in the event of an outage, to the extent of the loss of Gainesville's largest unit, would surfeit the area with capacity far in excess of the amount necessary at any one time, an obviously wasteful and uneconomic process.

[8] Generating capacity connected to the bus and ready to take load; capacity available in units operating at less than top capability.

[9] Generating capacity in excess of peak-hour load to cover contingencies.

The Company points out that Gainesville's "Ten-Year Master Plan" of September 1965 anticipates the installation of a 44-mw generator in 1970 with another scheduled for 1973, and that additional generation must therefore be acquired by 1970 for Gainesville to remain firm. Given the interconnection Gainesville will be able to defer installation of the additional capacity until 1972 or 1973 and thereby eliminate the 44-mw unit scheduled for 1970 by reduction of its installed reserve with a resultant annual net savings to Gainesville by reason thereof of approximately $300,000. Without the interconnection Gainesville would be required to constantly operate both its 44-mw and its 22-mw units if it is to maintain reliability of service. Gainesville's 44-mw unit carries the base load. The 22-mw unit is used to carry load swings and for spinning reserve in the event of an outage of its 44-mw unit. Thus to protect against the loss of the 44-mw unit Gainesville must bring its 16.5 mw on the line if loading on the 44-mw unit exceeds the maximum dependable output of the 22-mw unit. With instantaneous emergency service constantly available from Florida Power equal to the loading on Gainesville's 44-mw unit, Gainesville will be spared the necessity and the accompanying expense of operating its 22-mw and 16.5-mw units. Gainesville thereby also gains considerably more reliability of bulk power supply by acquisition of a second power source and could coordinate its automatic load shedding equipment with Florida Power for stabilization of frequency on the interconnected system in the event of an emergency.

While there is concurrence that the benefits to Gainesville as a result of the interconnection are substantial, there is considerable disagreement with respect to the advantages, if any, gained thereby by the Company. Florida Power flatly states that it neither needs nor wants emergency electric service from Gainesville. The Company points out that it has emergency power instantaneously available on its own system, or from systems with which it has a mutual support arrangement, which enable it to withstand outages of more than 400 mw without loss of service to its customers; that the instantaneous emergency energy available from Gainesville's three largest generators, which would at best not exceed 6 mw, 3 mw and 2.5 mw, is too insignificant to be of value to Florida Power in the planning and operation of its system in that the spinning reserve which Gainesville can supply is less than the hour to hour deviations between Florida Power's actual and scheduled production, and less than the 30- to 40-mw margin of error which the Company allows in making its spinning reserve calculations.

Gainesville's witness, applying the ready reserve formula of the Florida Operating Committee, calculates that Gainesville will be in a position to supply Florida Power and the members of the Florida Operating Committee with increased firm sales capacity estimated at 13 mw to 18.8 mw with a corresponding reduction in installed reserve. For the purpose of showing that the interconnection will impose no additional burden on Florida Power, Staff's witness makes a similar calculation with respect to the obligations of Florida Power and Gainesville as a member and alternately, as a satellite to Florida Power, but does not go so far as to conclude that Florida Power's installed reserve could be diminished by that amount.

There is little purpose to any extended discussion herein with respect to which of the parties would acquire the greater benefit from the proposed interconnection. It is not the balance of benefits which determines whether the Commission should direct that there be an interconnection but rather whether such interconnection, as stated in Section 202(b), is "necessary or appropriate in the public interest * * * ". From the record in this case it is clear that the proposed

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interconnection will serve the public interest and the fact of the matter is that such interconnection, in and of itself, has generated no opposition.

The difficulty arises, however, with respect to the conditions which should be attached to the order directing the interconnection. Florida Power has indicated on the record its willingness to interconnect with Gainesville provided (1) that Gainesville enter into an exclusive territorial agreement with Florida Power covering retail service outside the City limits; (2) that Gainesville be required to maintain installed reserve capacity equal to 125 percent of peak customer load; and (3) that Florida Power be paid a demand charge of $3.08 per kw per year for the instantaneous emergency electric services which it will supply to Gainesville equal to the megawatt capacity of Gainesville's largest unit.

The lack of agreement in connection with territorial service limitations is the principal obstacle to a negotiated settlement of this entire matter. As hereinbefore delineated, prior to the close of this hearing Gainesville constructed some 16.2 miles of primary distribution lines which duplicate previously erected lines of Florida Power and Clay Electric in the suburban areas. As demonstrated by Exhibits Nos. 15, 16 and 17, their respective poles are in some areas within a very few feet of each other and aside from economic considerations, are close enough to constitute an obviously hazardous situation. Gainesville offers little justification in the record for expansion of its electric service into the area outside the city limits other than a statement in its brief that "Gainesville has extended its lines through the suburban areas claimed by Clay and Florida Power, generally in response to requests for service * * * " but it is readily apparent from the record that such "requests for service" were, and Gainesville readily admits will continue to be, tinged with coercion in that those customers desiring Gainesville's water and sewage service were required to purchase the whole "package" even though Gainesville's rates for the same electric service were higher than Florida Power's.

Gainesville points out that Florida Power also maintains duplicating distribution lines in that it serves the University of Florida and an ice plant both of which are within the City limits and which could be served by the City. The facts with relation to the University show that the City supplied electrical service to the University from time of origin in 1906 to 1930. From 1930 to 1935 Florida Power supplied this service and from October 1935 to December 30, 1948, service was again supplied by Gainesville. Because of the considerable expansion of the University following World War II and the rapid growth of load in the Gainesville area, Gainesville requested the University to acquire electrical service from another source. Negotiations between the City, the University and Florida Power resulted in the construction of a 69 kv tap line to a new 1500 kva substation on the University campus. Further expansion of the University since that time necessitated the construction of additional facilities to the point where Florida Power's total direct investment in facilities which serve the University is now about one-half million dollars, exclusive of the cost of generation and transmission facilities. Thus considering this large capital investment in service facilities, occasioned in substantial part by Gainesville's request in 1948 that the University seek another source of supply, it is understandable and reasonable that the Company would seek to maintain the University as its customer despite the active competition of the City in recent years to recoup the University as a customer.

Perhaps the best reason for Gainesville's aggressive expansion is found in the fact that Gainesville's electrical system has proved to be a prime source of

revenue which is used to defray other costs of City government.[7] The record shows that since 1955 electric revenues have contributed from earned surplus an average of 24 percent per year of the total cost of City government. Electric revenues have steadily increased to the point where the yield for the fiscal year ended September 30, 1966, was $947,965 or 22 percent of the total City budget of $4,310,514. The City's Ten-Year Master Plan anticipates that electric revenue contribution will be $2,206,872 in 1970 and $4,244,340 in 1974.

That this type of competition combined with duplication of plant and facilities is an uneconomic and wasteful practice and therefore contrary to the public interest is at this stage of the game too elementary a proposition to require much by way of proof. It is generally recognized that there is a need for regulation in order to avoid the almost certain chaos and detriment to the public interest which would ensue if utility companies were permitted to compete directly with each other within the same areas and construct and maintain duplicating plants, transmission and distribution facilities.[8] It is for this reason that state utility commissions generally have authority to assign service territories, at least insofar as investor owned electric utilities are concerned,[9] and those utilities to whom exclusive franchises are granted thus become regulated monopolies, a status long recognized as being in the public interest.

In the instant case the problem arises from the fact that the Florida Public Utility Commission has jurisdiction to regulate investor owned utilities and, inter alia, assign service areas, but has no similar jurisdiction over municipally owned utilities. Gainesville is therefore in a position to extend its distribution lines clear across the state, should it so desire and compete directly with any utility, privately or publicly owned, with whose lines it is in proximity. No reason appears in the testimony or in the briefs, nor is any legislative history cited as to the intended purpose, if any, for this apparent omission in the Florida statute and, in the absence thereof, for the purposes of this decision it is unnecessary to do more than to take cognizance of the fact that Gainesville is free from both state and federal regulation.

The Federal Power Commission, under the circumstances of this case has jurisdiction under Section 202(b) to direct Florida Power to interconnect with Gainesville, *California Electric Power Co.* v. *F.P.C.*, 199 F. 2d 206, 208, 209 (CA9-1953), cert. den. 345 U.S. 934 (1953), a power not enjoyed by the state, *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498 (1942); *cf F.P.C.* v. *Southern Cal. Edison Co.*, 376 U.S. 205 (1964). Such jurisdiction does not, however, extend to fixing territorial service limitations for either Florida Power or Gainesville.[10] But this Commission must do more than merely direct the interconnection in a vacuum without regard for the consequences as argued by Gainesville. It is required by the statute to specifically find, as a prerequisite, that such interconnection is "necessary or appropriate in the public interest."

The record amply supports a finding that the proposed interconnection would be mutually beneficial; and, for the purposes of this proceeding, whether more

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[7] There are schools of thought which believe that it would be more equitable to apply such revenue to rate reduction.

[8] National Power Survey, Part I, p. 13.

[9] Some states have conferred jurisdiction on State Utility Commissions to assign service territories to municipals and cooperatives.

[10] It was the specific intent of Congress to limit FPC jurisdiction to interstate commerce and not to extend such jurisdiction to matters which it felt should be regulated by the state.

to one of the parties than the other is irrelevant. It is the benefit to the public as a whole with which this Commission is concerned.

From Gainesville's unequivocally stated intention to expand its electrical system and extend its distribution lines without regard to existing facilities, it follows that issuance of an unqualified order by the Commission directing the interconnection will inevitably result in the further uneconomic duplication of facilities,[2] a situation long recognized as inimical to the public interest. Such an order, moreover, would put Florida Power in the anomalous position where it will be furnishing the means for Gainesville to compete against it more effectively within its own assigned service territory. Under these circumstances Florida Power would be contributing to its own economic erosion because of the adverse effect of such increased competition on its capital investment in the area.

Dr. Gladys Kammerer, a professor of political science and Director, Public Administration Clearing Service of the University of Florida, with apparent long experience in urban affairs, called as a witness for Gainesville, agrees with the adverse effect which the duplication of facilities has on the public interest and also suggested a solution. On cross-examination she stated:

> * * * I don't believe there has to be duplication in the urban area. In fact, it seems to me that duplication is very bad, and I would assume that the two parties, the city on the one hand—the three parties, the city, on the one hand, and the Florida Power Corporation, and the Clay Cooperative Company, all get together as reasonable people and the city as it extends its whole package of services to the urban area could agree on a fair price for the city to buy out the distribution system there * * *

When asked by the Presiding Examiner what the prognosis should be in the event the parties were unable to reach agreement, Dr. Kammerer responded:

> Well, this is a supposition that is possible. I would also make the supposition that human beings are reasonable, and that bargaining is a part of our whole democratic process.

She then suggested:

> I recommend that the Federal Power Commission suggest to the parties of interest that they do negotiate as individuals and corporations of reasonable public interest.

and further observed:

> I never yet heard of a group outside of the United Nations who can't get together to bargain across the table, particularly if they are advised by any agency as significant as the Federal Power Commission.

The Presiding Examiner with full awareness of the numerous and, to date, fruitless attempts by the parties to resolve their differences nevertheless agrees with Dr. Kammerer that negotiation is the key to the situation as it presently stands whether, as suggested by Dr. Kammerer, achieved by Gainesville buying out Florida Power's facilities in the areas presently served by Florida Power and which Gainesville now wishes to serve, or by agreement which will delineate the areas to be served by each, or in fact on the basis of any other reasonable terms and conditions. The fact is that under the circumstances the parties must recognize that a mutually satisfactory solution can only be attained by the exercise of some give and take on both sides. As hereinbefore discussed the Commission cannot and should not order the requested interconnection without regard

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[2] Tr. 1637, 1638. The City's "Ten-Year Master Plan" also projects that by 1974 there will be an increase in the number of electric customers of whom 7270 will be outside the city and most of whom are presently served by Florida Power and Clay Electric.

for the consequences regardless of the fact that such interconnection may, in and of itself, be in the public interest.

Accordingly, Florida Power is directed to interconnect with Gainesville on terms and conditions as hereinafter described, provided an agreement is first reached between the parties whereby the further duplication of facilities will be avoided. Any claim by Gainesville that such a condition will place Florida Power in a more favorable bargaining position would be inconsistent with Gainesville's contention that the advantages to be gained by Florida Power as a result of the interconnection are as great if not greater than the advantages thereby acquired by Gainesville. It would be well to emphasize at this point that contracts for the sale of power at wholesale containing provisions designating service areas have been negotiated between Florida Power and the Cities of Bushnell, Ft. Meade, Leesburg, Mount Dora, Lake Helen, Bartow, Williston and Orlando.[38]

For the instantaneous emergency electric service which Gainesville will acquire by means of the interconnection Florida Power proposes that it be paid a "fair and reasonable" demand charge of $3.06 per kw per year equal to the capacity of Gainesville's largest unit. This would amount to an annual payment of about $150,000 as related to the capability of Gainesville's largest generator.

Gainesville, however, vigorously opposes the imposition of any charge whatsoever, contending that emergency backup service to Gainesville is not the only purpose of the interconnection. Gainesville sees the interconnection as a two way street whereby the parties will make available to each other, in time of emergency, power supply capabilities in excess of their own load requirements and firm supply obligations to others. Gainesville further points out, that to make this possible it is bearing the total cost of construction of the line to the point of connection between the two systems.

Whether the sole purpose of the interconnection is to supply instantaneous emergency backup service to Gainesville as contended by Florida Power or whether the interconnection will operate to the mutual benefit of the parties as viewed by Gainesville, the fact of the matter is that, aside from the financial and economic effect, if any, on Florida Power's rate payers, the Company, in order to provide Gainesville with the emergency backup power which it needs, as hereinbefore discussed, will at all times operate its system so as to have spinning capacity equal to the size of Gainesville's largest unit instantaneously available for delivery to Gainesville from any point on its system via its own transmission network; will relieve Gainesville of the burden of carrying spinning reserve on its own system; will by reason of the above effect investment and operating saving to Gainesville in excess of $300,000 per year after paying the full cost of the interconnection; and will give Gainesville's system a reliability of bulk power supply which it could not previously achieve in that it will be able to withstand a loss of generation up to 75 mw without interruption of service.

Florida Power, of course, discounts the advantages it will receive by reason of the interconnection and the Presiding Examiner is inclined to agree that Gainesville will derive more practical benefit from the interconnection than will Florida Power. Gainesville could avoid expensive automatic control equipment by permitting Florida Power to provide frequency regulation. It could also reduce its operating expenses by block loading its generators whereby Florida Power would be carrying load swings, and during certain periods, spinning reserves for the Gainesville system. For example, during a 24 hour period, Gainesville could generate sufficient energy to meet its own loads for the period as a

[38] Florida Power Corporation, Rate Schedule FPC Nos. 43 through 48.

whole, but during valley period hours it would be importing energy over its interconnection with Florida Power. Also, during peak period hours, it could to some limited extent be exporting energy to Florida Power over its interconnection. If such block loading were to be utilized in an effective manner, both parties could receive operating benefits.

It is an inescapable fact, regardless of who is more favored, that the interconnection is more necessary to Gainesville than to Florida Power, if for no other reason than that Florida Power will not increase its operating expenses or capital investment to any appreciable extent with or without the interconnection, whereas without the interconnection Gainesville will be obliged to do so on both counts.

Keeping in mind that it is the public interest which decides whether there should be an interconnection and not the relative advantages to be gained by the parties to be connected, it is still necessary that there be some arrangement whereby services rendered in excess of services received can be compensated. To effect the interconnection on an equitable basis, it is accordingly directed that Gainesville and Florida Power shall provide emergency assistance to each other over the proposed interconnection to the full extent of their ability to do so. Energy provided by each party to the other during time of emergency shall be deemed an inadvertent flow and shall be returned in kind, but for emergencies in excess of one hour, the party incurring the emergency shall compensate the other party for incremental fuel and operating expenses plus 10 percent, commencing after the first hour.

In lieu of imposing any set demand charges, it is further proposed by the Presiding Examiner that the total operating benefits in dollars, received by each party by reason of the interconnection, be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference be made by the party receiving the greater benefit by reason thereof to the party less advantaged (50 percent of the difference between the total savings to Gainesville less the total saving to Florida Power, or vice versa). It is suggested that under the method herein proposed suitable criteria for computing the respective benefits received can be devised by the parties themselves or submitted to this Commission for resolution if the parties so prefer, or fail to agree.

As a further condition to the interconnection Florida Power proposes that Gainesville be required to maintain on its own system an installed reserve capacity of at least 125 percent of its peak load. Florida Power contends that installed reserve in this amount is necessary to assure that Gainesville will materially contribute to its own support and not depend entirely on Florida Power for an extended period of time in the event of a sustained outage of Gainesville's largest unit. Staff recommends that Gainesville be required to maintain installed reserve capacity equal to 115 percent of its annual peak hour demand. Gainesville concurs in and agrees to accept this figure.

Florida Power's suggested figure of 125 percent is a judgment figure based on the opinion of its witnesses Hebb and Woodson who testified that this amount is necessary because Gainesville's largest unit constitutes such a high percentage of its summer long duration peak load. Hebb further testified that the installed reserve capacity for large interconnected systems "prevails at about 15 percent to 20 percent." Staff's proposal of a minimum reserve of 15 percent, on the other hand, is based upon a documented survey of capacity reserves actually installed and planned by members of the Florida Operating Committee for the 1961–1969 period, and upon studies relating to the specific characteristics of the Florida Power and Gainesville systems such as load characteristics, capacity of gener-

ation, size of individual generating units, forced outage rates and scheduled maintenance requirements.

On the basis thereof, the Presiding Examiner is persuaded that the figure recommended by Staff and concurred in by Gainesville will provide Florida Power with sufficient assurance that Gainesville will not unduly rely on or burden Florida Power in the event of an outage. As a matter of fact there is evidence which indicates that Gainesville's reserve capacity could be reduced to zero without increasing the Company's service risk level from what it would be without the interconnection.

In the event the block loading of generators hereinbefore suggested is adopted by the parties, Gainesville shall also be obligated to maintain spinning and ready reserves in accordance with the formula employed by the Florida Operating Committee; provided, that such spinning and ready reserve obligations shall at no time exceed 10 and 15 percent, respectively, of Gainesville's peak hour demand.

Staff takes issue with Gainesville's proposal for a 36 mva interconnection at Florida Power's Archer Substation and recommends, with concurrence by the Company, that Gainesville provide transmission facilities with a 60 mva transformer rating. Staff effectively demonstrates that by installing facilities of this capacity Gainesville would increase the extent of emergency assistance it could provide or receive by 66 percent at an increase in cost of $50,000, or only 3.3 percent of the total cost. This capacity, moreover, has been demonstrated to be commensurate with the capacity of the 115 kv transmission line leading to the Company's facilities. An interconnection with a capacity of 60 mva will therefore be directed.

There remains the matter of Florida Power's Motions to Dismiss. The first motion filed prior to the Answer is based on lack of jurisdiction because the City of Gainesville is not a "person" within the meaning of Section 202(b) of the Act. The short answer to this contention is the recent opinion of the Commission in the case of *City of Paris, Kentucky* v. *Kentucky Utilities Co.*, Opinion No. 525, August 4, 1967, 38 FPC 269, wherein the Commission found "that the City of Paris, Kentucky, is a 'person' within the meaning of Section 202(b) of the Federal Power Act and is engaged in the transmission and sale of electric energy." The Motion is therefore denied.

Florida Power's Motion to Dismiss Gainesville's First Cause of Action under Section 202(b) for Lack of Jurisdiction and Failure of Proof; Motion to Dismiss Gainesville's Second Cause of Action under Sections 205 and 206 for Lack of Jurisdiction and Failure of Proof; and Motion to Dismiss Gainesville's Third Cause of Action under Section 10 of the Act for Lack of Jurisdiction and Failure of Proof are similarly denied. Insofar as Florida Power's claim that this Commission lacks jurisdiction to direct the interconnection is concerned the answer is also found in the *City of Paris* case, *supra*. Therein the Commission found that Kentucky Utilities Co. was a "public utility," (a status not denied by Florida Power) subject to the jurisdiction of the Commission and directed "The establishment of a physical connection between the transmission facilities of KU and Paris * * *." Florida Power's contentions with respect to failure of proof are similarly unwarranted for the reasons hereinbefore discussed at length. This Commission has also previously found that it has jurisdiction to consider unreasonable and discriminatory contracts for sales of interstate energy to wholesale customers within the meaning of Sections 205 and 206 of the Act, *Georgia Power Co.*, Opinion No. 487, March 30, 1966, 35 FPC 436; *Duke Power Co.*, 32 FPC 1253 (1964); and may consider whether the such contracts violate

antitrust principles contrary to Section 10(h) of the Act. *Pacific Northwest Power Co.*, 31 FPC 247, 274, 275 (1964).

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) Florida power is a "public utility" within the meaning of Section 201(a) of the Federal Power Act.

(2) Gainesville is a "person" within the meaning of Section 202(b) of the Federal Power Act.

(3) It is necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act, that the Commission order Florida Power to establish physical connection of its transmission facilities with the facilities of Gainesville at the Archer substation location as set forth in Finding (4) below, to sell energy to and exchange energy with Gainesville upon the terms and conditions as ordered below provided, that the parties, in furtherance of the public interest shall prior thereto execute an agreement whereby the construction of duplicating facilities will be avoided. Such sale and exchange of energy will not place any undue burden upon Florida Power, nor require Florida Power to enlarge its generating facilities for such purpose, nor impair its ability to render adequate service to its customers.

(4) It is necessary and appropriate in the public interest that a physical connection be established on the transmission system of Florida Power at the location known as the Archer Substation on the Florida Power Suwannee-Silver Springs 240 kv transmission line. Such physical connection shall include the equipment necessary for a 240/115 kv transformation, in accordance with recognized engineering practice. Unless otherwise provided by written agreement of Florida Power and Gainesville, the facilities for such physical connection shall conform substantially with the facilities described in Exhibit 3. Gainesville shall provide or compensate Florida Power for providing the facilities necessary for a 60 mva interconnection at Florida Power's Archer Substation, and also shall provide a 115 kv transmission line and facilities for connecting same to the Gainesville system. The facilities shall be substantially as described in Exhibit 3, modified as necessary for a minimum of 60 mva capacity.

(5) Gainesville shall own, construct and service the 115 kv transmission line and its termination facilities on the Gainesville system. Construction, service and ownership of the physical interconnection facilities at the Archer substation shall be as agreed upon by the parties.

(6) Provided agreement is reached as specified in Finding (3) hereof, Florida Power and Gainesville shall proceed to construct the interconnection facilities referred to in Findings (4) and (5) above in the shortest reasonable time.

(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any

year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of: the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spinning and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfers: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph 7(g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph 7(d) above). Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph 7(f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph 7(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph 7(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.08 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(3) The total operating benefits, in dollars, received by each party by reason of the interconnection shall be computed based on the respective estimates of savings to each and annual payment of 50 percent of the difference shall be made by the party receiving the greater benefit to the party less advantaged.

(8) Within 30 days from the date of agreement as set forth in Finding (3) hereof Florida Power shall submit to the Commission for consideration a proposed rate schedule reflecting the terms and conditions of the interconnection as set forth in the Findings above.

(9) Florida Power shall report to the Commission the date of commencement of service provided for herein within 30 days following the commencement of such service.

(10) This Commission's direction that Florida Power connect its facilities with those of Gainesville, as set forth in the Findings above, renders moot the allegations in Gainesville's complaint that Florida Power is violating Sections

205 and 206 of the Federal Power Act by interconnecting with other electric utility systems and discriminating against Gainesville by refusing to interconnect with Gainesville.

(11) The evidence of record in this proceeding does not establish violation by Florida Power of Section 10(h) of the Federal Power Act as alleged in Gainesville's complaint.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission:

(A) Gainesville and Florida Power shall commence negotiations immediately for the purpose of reaching an agreement whereby all duplication of facilities will be eliminated and avoided and pursuant to which Florida Power will sell and exchange energy with Gainesville. If no agreement is reached within 20 days after this order becomes the final order of the Commission, the Commission shall be so advised in writing by both parties, each party stating the reasons for failure to reach agreement.

(B) Provided agreement is reached as described in Paragraph A hereof Florida Power shall establish connection of its facilities with those of Gainesville as described in Finding (4), *supra*, this being necessary and appropriate in the public interest for the purposes of Section 202(b) of the Act.

(C) Florida Power shall notify this Commission when the interconnection ordered in Paragraph B hereof is established and operative.

MARTIN B. RENDELMAN,
Presiding Examiner.

APPENDIX D

MAY 1 2 37 PM '70 FEDERAL POWER COMMISSION

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 19 69

No. 27404

FLORIDA POWER CORPORATION,

Petitioner,

versus

FEDERAL POWER COMMISSION,

Respondent.

Petition for Review of an Order of the Federal Power Commission (Florida Case.)

Before BROWN, Chief Judge, TUTTLE and MORGAN, Circuit Judges.

JUDGMENT

This cause came to be heard on the petition of Florida Power Corporation, for review of an order of the Federal Power Commission in Docket No. E-7257, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the order of the Federal Power Commission in this cause be, and the same is hereby enforced in part and denied in part, in accordance with the opinion of this Court.

It is further ordered that petitioner pay two-thirds (2/3) of the costs on appeal in this Court and that respondent pay one-third (1/3) of said costs.

May 1, 1970

Issued as Mandate MAY 26 1970

EDWARD W. WADSWORTH
Clerk, United States Court of Appeals, Fifth Circuit

By _____ MAY 26 1970
Deputy

New Orleans, Louisiana

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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA,

Petitioners,

v.

FLORIDA POWER CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The Petition for a Writ of Certiorari in this case relates only to that portion of the opinion of the Court of Appeals for the Fifth Circuit, reported at 425 F. 2d 1196, where the Court ruled:

> "But in sending this case back to the Commission for it to fix a formula for computing what would be reasonable compensation, we do not even whisper what that formula should be. On reconsideration the Commission may determine that the set demand

charge requested by Florida Power is a reasonable formula. It may determine that the 50 percent-of-the-difference-in-benefits formula of the Presiding Examiner is more appropriate. It may decide to use parts of both, neither formula, or a completely different formula. This is for the Commission subject to later review."

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Respondent does not agree with Petition's statement of the Question Presented and respectfully submits the question should be stated thus:

Whether, in ordering Florida Power Corporation to permit the City of Gainesville to establish physical connection with Florida Power Corporation's transmission facilities, the Federal Power Commission, acting under Section 202 (b) of the Federal Power Act, must provide some formula for reasonable compensation to Florida Power Corporation for supplying the City of Gainesville with extremely valuable emergency backup (standby) service.

The Petition for a Writ of Certiorari filed by the City of Gainesville (Gainesville) misstates the decision of the Court of Appeals for the Fifth Circuit as requiring the Federal Power Commission to include an allowance for benefits received as well as reimbursement for costs. The Court of Appeals did not decide there must be an allowance for or even a sharing of benefits. The Court decided only that there must be some formula for reasonable compensation "for providing an extremely valuable service." The Court carefully left to the discretion of the Commission whether the compensation formula should be based

upon an allocation of costs or a sharing of benefits or something completely different.

Similarly, the Petition for a Writ of Certiorari filed by the Solicitor General misstates the question to be whether the Federal Power Commission must condition the interconnection upon compensation terms based on the relative benefits rather than the relative burdens. The Circuit Court did not decide compensation must be based upon relative benefits. The Court limited its decision to a requirement that there be some compensation formula "for providing an extremely valuable service." The Court stated, "we do not even whisper what that formula should be".

STATUTE INVOLVED

The Petition adequately states or refers to the federal statute involved.

STATEMENT OF THE CASE

To place the question in proper prospective, it is necessary to supplement the Statement of the Case contained in the Petition.

Florida Power Corporation (Florida Power) owns and operates an integrated electric generation, transmission and distribution system (not a bulk power supply system as stated by Gainesville) serving, as of 1966, approximately 370,000 retail customers, 12 municipal distribution systems and 9 REA Cooperatives. Florida Power's generation is provided for the most part by units rated at 527 mw,[1] 525 mw, 404 mw, 232 mw, 125 mw, 125 mw, 88 mw, 84 mw, 80 mw. Florida Power's system includes a large backbone transmission network which, as of Decem-

[1] A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

ber 31, 1965, contained 410 miles of 230 kv[2] lines, 1156 miles of 115 kv lines and 1409 miles of 69 kv lines, exclusive of radial (as distinguished from through transmission) lines. Through its backbone transmission network, Florida Power is interconnected with the other four major electric systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Company, Orlando Utilities Commission and Jacksonville Electric Authority),[3] and with Georgia Power Company and Gulf Power Company. In 1970 Florida Power's backbone transmission network will have a depreciated value of about $65 million with annual fixed charges and operating costs of about $13 million (R. 830-32, 957, 2070-4, 2077).

A primary function (estimated at 60%) of Florida Power's backbone transmission network is furnishing system reliability by protecting against loss of a power source by delivering reserve (emergency) power to any point on the system where reserves are required (R. 830-1, 957).

Emergency backup service is providing the reserve of generation which a system must have to protect against inability to supply load in the event of a failure or outage of generation. Generally speaking, it is industry practice to have available a reserve of generating capacity at least equal to the capacity of a system's largest generator. To the extent emergency backup service is available from some other source, a system can reduce its installed reserve of generation. Generally speaking, it also is industry practice to protect against a failure or outage of a sys-

[2] A kilovolt (kv) is a large unit of electrical voltage and a term used in rating transmission lines. Generally speaking, depending upon the size of the conductor, a 230 kv line has a capacity of approximately 350 mw, a 115 kv line has a capacity of approximately 125 mw, and a 69 kv line has a capacity of approximately 50 mw.

[3] These four systems in 1965 had a combined installed net plant generating capability of 5837 mw (R. 1789).

tem's largest generator by operating at all times a reserve of generation (customarily referred to as spinning reserve) equal to the load being carried by the largest generator in operation. The operating reserve of generation, as distinguished from the installed reserve of generation, is called spinning reserve because it must be in operation, i.e. spinning, and be instantaneously available. If the operating reserve of generation is not instantaneously available with a loss in frequency of less than one-half cycle per second, i.e. 1/120th of a second, the system will suffer a frequency disturbance which can cascade, trip out other generating units, and shut down the entire system (R. 289, 296, 848, 1329).

Gainesville owns and operates a small generation and distribution system with a total generating capability of 138.4 mw provided by units rated at 50 mw, 24 mw, 16.5 mw, 12.6 mw, 5 mw, 1 mw and two 15 mw gas turbines. Contrary to the representation in Gainesville's Petition, Gainesville does not own any transmission facilities and has never proposed constructing any transmission facilities, except a loop around the City for internal use only and except 7.5 miles of line to tap Florida Power's backbone transmission network.

The disparity in the sizes of the Gainesville and Florida Power generation and transmission capabilities is striking and highly significant. These disparities in size are increasing each year due to the annual load growth on the Florida Power system being currently almost twice Gainesville's 1966 peak load and in excess of Gainesville's projected 1970 peak load of 102 mw (R. 2079). Gainesville's largest 50 mw generator is dwarfed by generators on the Florida Power system and is about the equivalent of units which on the Florida Power system "are used only to meet peak

load conditions and frequently are placed on cold shutdown" (R. 396, 829).

The disparity in transmission facilities is of paramount significance since Gainesville proposes to protect against any generating deficiency on its system by relying upon Florida Power's backbone transmission network for emergency backup service. As previously noted, Florida Power owns and operates a $65 million transmission network at an annual cost of $13 million a year; whereas Gainesville does not have and does not propose any transmission except a loop around the City and a radial line to connect with Florida Power. Staff engineering witness Braitman, in his direct testimony, acknowledged the importance of transmission in "achieving reliability" by handling "emergency flows resulting from facility outages". On cross examination, he said, "in coordination, one of the biggest problems that individual systems have to work on is trying to achieve equity in the sense that the system that is providing a greater share of transmission be somehow compensated for it" (R. 1329, 1403).

Gainesville's principal witness was Mr. Joseph L. Benson, a consulting engineer formerly on the Staff of the Federal Power Commission. In his prepared direct testimony, Mr. Benson testified: "Gainesville needs and wants the Commission to direct Florida Power . . . to supply emergency backup service to Gainesville in the magnitude of Gainesville's largest generating unit or the capacity of the interconnection, whichever is smaller" (R. 308).

Mr. Ebaugh, the consulting engineer who since 1952 has designed the Gainesville system, explained that emergency backup service from Florida Power should eliminate the possibility of any generating deficiency on the Gainesville

system (R. 129-31). Mr. Kelly, manager of the Gainesville system, testified that the connection would provide Gainesville with instantaneous emergency backup service at least equal to the load on its largest 50 mw generator (R. 215-7). At the hearing before the Commission, Gainesville's attorney Mr. Spiegel stated: "We are asking number one, we can live without everything else, but number one, we are asking for emergency backup service" (R. 1683).

Thus, it is unarguably clear that the primary (Gainesville's attorney called it "number one") reason and purpose for Gainesville establishing physical connection with Florida Power's transmission facilities is to have Florida Power supply Gainesville with emergency backup service to protect against any generating deficiency on the Gainesville system.

Gainesville's principal witness, Mr. Benson, explained Gainesville would realize substantial financial savings of about $520,000 a year from a reduction in its installed reserve of generation made possible by Gainesville relying upon Florida Power's transmission facilities for emergency backup service (R. 337-8, 433-4). The $520,000 a year represents the net annual savings to Gainesville after recovering its costs in making the connection. These savings are the difference between the cost of $6.7 million of generation eliminated by the connection less the cost of a $1.5 million transmission line constructed to tap Florida Power's backbone transmission network (R. 177-8, 310-11, 337-38).

Mr. Benson testified Gainesville can also save an additional $100,000 a year in fuel costs by purchasing approximately 50% of its annual energy requirements from Florida Power's larger, more efficient generators (R. 315-6).

The evidence established irrefutably that emergency backup service will be a one way service from Florida Power to Gainesville (R. 852-4, 951-2). The Presiding Examiner explained that Gainesville can not reciprocate because the City's three largest generators "at best"[4] can supply an inadvertent or instantaneous energy transfer of only 6 mw, 3mw and 2.5 mw. The Court of Appeals agreed with the Presiding Examiner that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages of more than 400 mw and which allows a 30 to 40 mw margin of error in the calculations of its hourly requirements for spinning reserve (R. 4027). The Court of Appeals properly recognized (in ft. 10), "it is totally unrealistic to consider the City's system a significant power source [for Florida Power]."

Because Gainesville at all times will be relying upon Florida Power's transmission facilities for a minimum[5] of 50 mw of emergency backup service (whether or not energy is being transferred) to the same extent as will Florida Power for its much larger requirements and be-

[4] The "at best" refers to after allowing 20% extra for an alleged faster rate of response for Gainesville's small generators. The figures for Gainesville's capability to supply instantaneous emergency service are determined by taking 10% of the size of the unit and adding 20% for the alleged faster rate of response. The 10% is the spinning reserve capability (i.e. the ability to supply an instantaneous transfer of energy) of units 75 mw and smaller according to the rules of the Florida Operating Committee consisting of Florida Power and the four other major utilities in peninsular Florida. For example, Gainesville's largest 50 mw generator has a spinning reserve capability of 5 mw (i.e. 10%) plus 1 mw for the alleged faster rate of response (i.e. 20% of the 5 mw) for a total of 6 mw.

[5] Actually Gainesville will receive instantaneous emergency backup service of 60 mw, the capacity of the connection, rather than 50 mw, the capacity of its largest generator. During an emergency the connection by overloading may supply even more than 60 mw (R. 4531).

cause Gainesville can not reciprocate in supplying emergency backup service, Florida Power proposed Gainesville pay its fairly allocated share of the cost of owning and operating Florida Power's backbone transmission network. Based upon 1970 load projections, Gainesville's fairly allocated share of the cost was computed to be $3.08 per kw per year times the 50 mw which Gainesville "needs and wants" and which is Gainesville's "number one" requirement. This would amount to about $154,000 a year (R. 959). Payment by Gainesville of this share of Florida Power's costs would be far less than the financial benefits of more than $620,000 a year which Gainesville, according to its principal witness Mr. Benson, will derive from the connection (R. 177-8, 337-8, 432-3).

The Court of Appeals properly agreed with the Presiding Examiner that it is necessary to have some arrangement to compensate for services rendered in excess of services received. In lieu of a cost allocation per kw per year as proposed by Florida Power, the Presiding Examiner recommended a sharing of benefits with the party receiving the greater benefit compensating the party less advantaged by an annual payment in the amount of 50 percent of the difference in total operating benefits (R. 4034).

Remarkably, and in spite of the fact emergency backup service is the primary ("number one") purpose and function of the connection, the Commission provided no compensation whatsoever for emergency backup service, yet it prescribed compensation for every other conceivable service across the connection.[6] In the case of other serv-

[6] See paragraphs 7(b), (d), (f), (g) and (8) of the Commission's Order which prescribe charges or sharing benefits whenever there is a sale or exchange of generating capacity or energy (R. 4488-9). The Commission relieved Gainesville of having to reimburse Florida

ices, the Commission's formula for compensation is based for the most part upon a sharing of benefits.

The Commission prescribed compensation for energy delivered during an emergency,[7] but erred in failing to recognize that emergency backup service is not the supplying of energy but is the furnishing of capacity in a state of readiness capable of supplying instantaneously at any instant of the day or night the energy required to protect against loss of a system's largest generator. Emergency backup service is the fire department. It is the equipment installed and in a continuous state of readiness to meet any generating deficiency. Gainesville wants to rely at all times upon Florida Power's backbone transmission network for emergency backup service whether or not energy is being transferred. Emergency energy is the "water" used to put out the "fire". The Commission ordered Gainesville to pay for the "water" but relieved Gainesville from all responsibility to contribute to the cost of the fire department.

The Court of Appeals properly recognized that the connection is not necessary or appropriate in the public interest insofar as the public served by Florida Power is concerned and will be an undue burden upon Florida Power if Florida Power and its customers have to bear the allo-

---

Power for the expense of frequency control (para. (8)) when Florida Power pointed out the reimbursement would be too insignificant to justify the expense of preparing and administering a rate schedule (R. 4534).

[7] In paragraph 7(e) and (g) (1) of its Order, the Commission provided for energy transferred during the first 60 minutes of an emergency to be returned in kind or paid for at 4 mills per kwh or the seller's fuel cost plus 10%, whichever is less. As noted above, Gainesville at all times will be relying upon Florida Power for emergency backup service whether or not energy is being transferred. The transfer of energy will be relatively unimportant. At 4 mills per kwh, 50 mw for one hour represents only a $200 transaction.

cated fixed cost and carry the entire responsibility for providing the extremely valuable service of emergency backup service. The Court remanded the case to the Commission to fix some formula for reasonable compensation. The Court did not order that Gainesville be assessed for benefits received as well as reimbursement for costs, or that compensation be based on the relative benefits rather than the relative burdens. The Court left to the discretion of the Commission whether the formula should be based upon an allocation of costs or a sharing of benefits or something completely different. The case is brought to this Honorable Court without the Commission having made any attempt to fix a formula to provide reasonable compensation for emergency backup service.

ARGUMENT

I.

THE DECISION BELOW IS CLEARLY CORRECT.

It would seem obvious the Court of Appeals was clearly correct in remanding the case to the Federal Power Commission to fix some formula to compensate Florida Power for emergency backup service. Section 202(b) of the Federal Power Act requires as pre-conditions to a forced interconnection express findings by the Commission that the connection is necessary or appropriate in the public interest and not an undue burden upon Florida Power. The Court of Appeals properly concluded these statutory pre-conditions are not met without some formula to provide Florida Power with the reimbursement reasonably due it.

The decision does not infringe upon the discretion of the Commission or interfere with its exercise of whatever expertise it may have to determine reasonable compensa-

tion. The Court merely decided, and quite properly, that the Commission can not abdicate its statutory duty and responsibility, and do nothing. The decision requires of the Commission only that it act and carefully preserves to the Commission complete freedom to act, in the first instance, in any way that it may deem best.

The decision most certainly does not impose upon Gainesville a heavy "value" charge to obtain an interconnection. Gainesville's own estimate of its annual savings and financial benefits is $620,000. It should be noted that this figure is net, after, and not before, Gainesville has recovered its entire estimated cost for making the connection. Florida Power proposed an annual charge of $154,000 a year, which was based upon an allocation of costs and was not based upon benefits or the value of services received by Gainesville.

The decision most assuredly would not impose a discriminatory charge upon Gainesville. Where Florida Power has connections with other systems such as Florida Power & Light Company, Tampa Electric Company and Orlando Utilities Commission which do not provide compensation for emergency backup service, it is because each participating system has generation and through transmission facilities capable of supporting the other system. In these other interconnections emergency backup service is not a one way service because of this mutual capability to serve each other. However, in the Gainesville-Florida Power situation failure to provide any formula for compensation discriminates against Florida Power and its customers because the absence of mutuality in facilities and service capability imposes upon Florida Power the whole cost and the entire responsibility for emergency backup service.

II.

THE PETITION FOR WRIT OF CERTIORARI IS PREMATURE.

The Petition for a Writ of Certiorari is premature in that it asks this Honorable Court to review an interlocutory order of the Court of Appeals remanding the case to the Federal Power Commission. The Petition attacks the propriety of a compensation formula before the formula has been prescribed by the Commission and reviewed by the Court of Appeals. As stated in *American Construction Co. v. Jacksonville Railway Co.*, 148 U.S. 372, 384, "this court should not issue a Writ of Certiorari to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." See *Brotherhood of Locomotive Firemen v. Bangor and Aroostook R.R. Co.*, 389 U.S. 327; *Hamilton Shoe Co. v. Wolf Brothers*, 240 U.S. 251, 258.

Until the Commission has acted upon the remand, the administrative remedy and proceedings will not have been exhausted. Obviously, all of Petitioner's reasons and arguments for issuing the writ are mere conjecture and premature except as directed against a compensation formula which the Commission has yet to fix. Absent the formula, it is impossible to know whether it will seriously impair the Commission's efforts to encourage interconnections, threaten to disrupt the entire composition and structure of the electric industry, impose a heavy "value" charge which is not justifiable to join a connection, jeopardize present pooling arrangements, or have any of the other dire consequences such as are prematurely alleged in the Petition. Until the formula is fixed and the administrative proceedings concluded, it is impossible for this Honorable Court to know whether there is a sufficient question of federal law, public interest or public policy to justify issuance of a writ of certiorari.

III.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW, PUBLIC INTEREST OR PUBLIC POLICY.

The decision of the Court of Appeals does not present any important question of federal law, public policy or public interest justifying the issuance of a writ of certiorari by this Honorable Court. Allegations and argument to the contrary in the Petition for the issuance of a writ are groundless and without foundation. The Court of Appeals' decision does not threaten serious impairment of the Commission's efforts to encourage voluntary interconnection on reasonable terms, will not have an important and far-reaching impact upon the Commission's ability to discharge its responsibility of assuring an abundant supply of electric energy throughout the United States, will not discourage meaningful interconnections and coordination between systems, does not threaten to disrupt the entire composition and structure of the electric industry, and will not jeopardize present pooling arrangements. Nor will the decision impose a heavy "value" charge not heretofore thought justifiable in order to obtain an interconnection.

The truth of the matter is that the files of the Commission, which are a matter of public record, show that the Commission has approved rates to be charged for emergency backup (standby) service very similar to that which Florida Power has requested and for which the Court of Appeals has ordered the Commission to fix some formula.

Southeastern Power Administration (SEPA) is an agency of the United States Government within the Department of the Interior. SEPA, under its rate schedule SC-1 (Revised), approved by the Federal Power Commission on June 29, 1970, charges South Carolina Public Service Authority for emergency standby (backup) service at the rate of $0.25 per kw per billing month ($3.00 per kw

per year), plus 3 cents per kw per calendar day or fraction thereof for such capacity as the Authority uses.

The files of the Commission also show that on June 17, 1968, the Commission approved SEPA's rate Schedule CR-2-A for the supply of standby service to three generation and transmission cooperatives. That Schedule provides for a standby capacity charge of $2.75 per kw per year, plus 4 or 6 cents per kw per day for standby power actually delivered, plus an energy charge of 3.25 mills per kwh for all emergency standby energy. Two cooperatives are each being charged by SEPA for 100 mw and the third for 38 mw of standby capacity.

In the aforementioned order of June 17, 1968 approving SEPA's charges for emergency standby service in its Schedule CR-2-A, the Commission found that SEPA's rates would not be inconsistent with the Flood Control Act of 1944. Section 5 of that Act (16 U.S.C.A. § 825s) requires power and energy to be disposed of in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The Act directs rate schedules shall be drawn having regard to the recovery of the cost of producing and transmitting such electric energy.

Since the Commission has approved these charges for the United States Government acting by and through SEPA, how can it seriously be contended that the decision of the Court of Appeals, ordering the Commission to provide a formula to compensate Florida Power for supplying standby service, presents important questions of federal law, public interest or public policy with such dire consequences as are alleged in the Petition for a Writ of Certiorari?

Rate schedules accepted by the Commission include many others now in effect that provide some form of charge

for emergency backup (standby) service. Examples of such provisions may be found in rates filed by Virginia Electric Power Company, Central Louisiana Electric Company, Inc., Utah Power and Light Company, Nevada Power Company, and Kansas City Power and Light Company.

The Commission attempted to justify its refusal to provide any formula for compensating Florida Power for emergency backup service by espousing for the first and only time[8] the fallacious doctrine that the controlling factor in fixing compensation is not services rendered and facilities supplied but whether burdens or responsibilities are shared in proportion to size (R. 4478). This novel theory is patently erroneous because systems interconnect to obtain from each other services and facilities, and because sharing burdens or responsibilities in proportion to size can be, as it is in this case, utterly meaningless.

Interconnection is an industry practice which has developed voluntarily over many years before and since enactment of the Federal Power Act in 1935. The incentive and motivation for interconnection has been the opportunity for benefits by sharing facilities and interchange of services. The Commission seemingly has always recognized that the function and purpose of interconnection is to obtain services and benefits. In its report known as the *National Power Survey* (1964), the Commission in Part I, Chapter 12, p. 169 *et seq.* described the purposes of the many interconnections voluntarily established by the industry. The *Survey* refers repeatedly to "savings" and to "benefits". At page 173 of Part I of the *Survey*, it is stated that "whenever the parties show a willingness to work

[8] So far as Florida Power can discover, the theory that the determining factor in fixing compensation is not services rendered or facilities supplied but is proportionate sharing of responsibilities according to size has never been suggested by the Commission or by any other regulatory body or by any one in any other proceeding.

together a solution can be found to the complex problems involved *in measuring and equitably sharing the benefits* and burdens involved in such cooperative effort." (Emphasis supplied).

In the only reported decision in which the Federal Power Commission has dealt with rates for services across an interconnection, the Commission, in *Public Service Company of Oklahoma*, 25 F.P.C. 656, 659, 38 PUR (3d) 384, 388, recognized, "By the very nature of any such coordination and interchange arrangement, there is a mutual exchange of services and benefits". For determining rates and charges in an interconnection contract, the Commission said, "a-cost-of-service or rate base type of analysis, other cost analyses, and other considerations, *such as whether there is a sharing of the fruits of coordinated operations*, all play a part". (Emphasis supplied).

Interconnection is a voluntary industry practice motivated by exchange of services and benefits, and not something that has been forced upon the industry by the Commission. In fact, it was not until 1966 in its *Crisp County* decision, 67 PUR (3d) 75, and 1967 in its *City of Paris* decision, 38 F.P.C. 269, 70 PUR (3d) 475, and 1968 in its *Gainesville* decision, 40 F.P.C. 1227, 79 PUR (3d) 269, that the Commission ever was required to assert jurisdiction under Section 202(b) to compel a connection. Actually, in the case of Gainesville, Florida Power has consistently offered Gainesville a voluntary interconnection provided it be on terms fair and reasonable to Florida Power, including reasonable compensation for services rendered in excess of services received (R. 2093-2110).

Furthermore, as previously noted in the Statement of the Case, sharing responsibilities in proportion to size is

utterly meaningless in the Gainesville-Florida Power situation since Gainesville can not supply a significant amount of emergency backup service. The Court of Appeals correctly pointed out, "it is totally unrealistic to consider the City's system a significant power source."

It would seem self-evident that whether and to what extent parties to a connection should be compensated must be determined not from a meaningless proportionate sharing of responsibilities but from the very meaningful services rendered and facilities supplied. The Presiding Examiner and the Court of Appeals were correct in concluding, while public interest and not relative advantages determine whether there should be a connection, "it is still necessary [to effect the interconnection on an equitable basis] that there be some arrangement whereby services rendered in excess of services received can be compensated" (R. 4034).

Whether for any specific interconnection there should or should not be a formula for compensation such as ordered by the Court of Appeals in this case depends upon all of the circumstances of the interconnection under consideration. Each interconnection is a special situation that must be evaluated in the light of its own particular facts. It is, however, generally true, as Commissioner Carl E. Bagge of the Federal Power Commission has pointed out (address before the American Public Power Association, Legal Seminar, on November 13, 1967), a special situation exists when the interconnection is between a large system such as Florida Power (with generators of over 500 mw and a $65 million transmission system) and a small system such as Gainesville (with a largest generator of 50 mw and no transmission):

> "It is, of course, obvious that an isolated system which is unable to install units in excess of 25 or 50

megawatts is not going to be able to take full advantage of the benefit of the new technology. The very fact, however, that its largest units are in this size category tends to produce a reluctance on the part of its larger neighbors to pool with it since the great bulk of the benefits normally will flow to the small system, and from the viewpoint of the larger systems, even if the arrangements between the parties reflect this disparity, the necessary complications of any but the most rudimentary pooling arrangemnets may hardly be worth the effort."

Interconnection between a large system and a small system, or between any two systems, is not discouraged or deterred because there will be a lack of mutuality in services and benefits since this disparity can be and often is taken into account in the terms of the interconnection arrangement. To the contrary, it is the failure, in this case Gainesville's and the Commission's blind refusal, to take into account the disparity in services and benefits that discourages and deters interconnection.

Statements in the Petition for a Writ of Certiorari that none of Florida Power's contracts with other systems contain a comparable charge to that requested of Gainesville, and that it would not be consistent with industry practice to require a "value" charge from Gainesville are completely erroneous. Note the SEPA rates referred to above. Also the record shows that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity of service or mutuality of benefits from an interconnection. One such occasion was with Florida Power & Light Company which paid all of the fixed charges and administrative costs of a connection until it became mutually beneficial. The other occasion was with Gulf Power Company to whom Florida Power still is paying $5.80 per kw per year for 12 mw of

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demand for a connection which Gulf Power installed for the benefit of Florida Power (R. 833-834). The fact that there is not a similar charge for connections between Florida Power and other systems where there is relative mutuality in facilities and service capability is totally irrelevant to the Florida Power-Gainesville situation where there will not be mutuality in services rendered and facilities supplied.

It likewise is irrelevant to this proceeding to cite the fact there are other isolated electric systems which are not parties to an interconnection agreement. There may or may not be good reasons why other systems remain isolated. It may or may not be economically practical to interconnect a particular system. If practical to interconnect, a formula for compensation such as that ordered by the Court of Appeals in this case may or may not be called for by the circumstances of the particular situation.

The case for a Florida Power-Gainesville interconnection should be judged only in the light of its own particular facts. When so judged, it is obvious that the decision of the Court of Appeals is clearly correct, that it does not call for a heavy "value" charge, and that it leaves the Commission ample latitude and precedent to fix a compensation formula that will be fair and reasonable to both parties. It is equally obvious that fixing a formula for compensation that will be fair and reasonable to Florida Power and Gainesville does not raise a question of federal law, public interest or public policy justifying the issuance of a writ of certiorari by this Honorable Court.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied. But should this Honorable Court grant the petition for certiorari, it is respectfully requested that this Honorable Court grant Florida Power Corporation's cross-petition for a writ of certiorari filed herewith.

Respectfully submitted,

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Attorneys for Respondent.

August 27, 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 469

FEDERAL POWER COMMISSION,

Petitioner,

v.

FLORIDA POWER CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The Petition for a Writ of Certiorari in this case relates only to that portion of the opinion of the Court of Appeals for the Fifth Circuit, reported at 425 F. 2d 1196, where the Court ruled:

> "But in sending this case back to the Commission for it to fix a formula for computing what would be reasonable compensation, we do not even whisper what that formula should be. On reconsideration the Commission may determine that the set demand

charge requested by Florida Power is a reasonable formula. It may determine that the 50 percent-of-the-difference-in-benefits formula of the Presiding Examiner is more appropriate. It may decide to use parts of both, neither formula, or a completely different formula. This is for the Commission subject to later review."

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Respondent does not agree with Petition's statement of the Question Presented and respectfully submits the question should be stated thus:

Whether, in ordering Florida Power Corporation to permit the City of Gainesville to establish physical connection with Florida Power Corporation's transmission facilities, the Federal Power Commission, acting under Section 202 (b) of the Federal Power Act, must provide some formula for reasonable compensation to Florida Power Corporation for supplying the City of Gainesville with extremely valuable emergency backup (standby) service.

The Petition for a Writ of Certiorari filed by the City of Gainesville (Gainesville) misstates the decision of the Court of Appeals for the Fifth Circuit as requiring the Federal Power Commission to include an allowance for benefits received as well as reimbursement for costs. The Court of Appeals did not decide there must be an allowance for or even a sharing of benefits. The Court decided only that there must be some formula for reasonable compensation "for providing an extremely valuable service." The Court carefully left to the discretion of the Commission whether the compensation formula should be based

upon an allocation of costs or a sharing of benefits or something completely different.

Similarly, the Petition for a Writ of Certiorari filed by the Solicitor General misstates the question to be whether the Federal Power Commission must condition the interconnection upon compensation terms based on the relative benefits rather than the relative burdens. The Circuit Court did not decide compensation must be based upon relative benefits. The Court limited its decision to a requirement that there be some compensation formula "for providing an extremely valuable service." The Court stated, "we do not even whisper what that formula should be".

STATUTE INVOLVED

The Petition adequately states or refers to the federal statute involved.

STATEMENT OF THE CASE

To place the question in proper prospective, it is necessary to supplement the Statement of the Case contained in the Petition.

Florida Power Corporation (Florida Power) owns and operates an integrated electric generation, transmission and distribution system (not a bulk power supply system as stated by Gainesville) serving, as of 1966, approximately 370,000 retail customers, 12 municipal distribution systems and 9 REA Cooperatives. Florida Power's generation is provided for the most part by units rated at 527 mw,[1] 525 mw, 404 mw, 232 mw, 125 mw, 125 mw, 88 mw, 84 mw, 80 mw. Florida Power's system includes a large backbone transmission network which, as of Decem-

[1] A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

ber 31, 1965, contained 410 miles of 230 kv[2] lines, 1156 miles of 115 kv lines and 1409 miles of 69 kv lines, exclusive of radial (as distinguished from through transmission) lines. Through its backbone transmission network, Florida Power is interconnected with the other four major electric systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Company, Orlando Utilities Commission and Jacksonville Electric Authority),[3] and with Georgia Power Company and Gulf Power Company. In 1970 Florida Power's backbone transmission network will have a depreciated value of about $65 million with annual fixed charges and operating costs of about $13 million (R. 830-32, 957, 2070-4, 2077).

A primary function (estimated at 60%) of Florida Power's backbone transmission network is furnishing system reliability by protecting against loss of a power source by delivering reserve (emergency) power to any point on the system where reserves are required (R. 830-1, 957).

Emergency backup service is providing the reserve of generation which a system must have to protect against inability to supply load in the event of a failure or outage of generation. Generally speaking, it is industry practice to have available a reserve of generating capacity at least equal to the capacity of a system's largest generator. To the extent emergency backup service is available from some other source, a system can reduce its installed reserve of generation. Generally speaking, it also is industry practice to protect against a failure or outage of a sys-

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[2] A kilovolt (kv) is a large unit of electrical voltage and a term used in rating transmission lines. Generally speaking, depending upon the size of the conductor, a 230 kv line has a capacity of approximately 350 mw, a 115 kv line has a capacity of approximately 125 mw, and a 69 kv line has a capacity of approximately 50 mw.

[3] These four systems in 1965 had a combined installed net plant generating capability of 5837 mw (R. 1789).

tem's largest generator by operating at all times a reserve of generation (customarily referred to as spinning reserve) equal to the load being carried by the largest generator in operation. The operating reserve of generation, as distinguished from the installed reserve of generation, is called spinning reserve because it must be in operation, i.e. spinning, and be instantaneously available. If the operating reserve of generation is not instantaneously available with a loss in frequency of less than one-half cycle per second, i.e. 1/120th of a second, the system will suffer a frequency disturbance which can cascade, trip out other generating units, and shut down the entire system (R. 289, 296, 848, 1329).

Gainesville owns and operates a small generation and distribution system with a total generating capability of 138.4 mw provided by units rated at 50 mw, 24 mw, 16.5 mw, 12.6 mw, 5 mw, 1 mw and two 15 mw gas turbines. Contrary to the representation in Gainesville's Petition, Gainesville does not own any transmission facilities and has never proposed constructing any transmission facilities, except a loop around the City for internal use only and except 7.5 miles of line to tap Florida Power's backbone transmission network.

The disparity in the sizes of the Gainesville and Florida Power generation and transmission capabilities is striking and highly significant. These disparities in size are increasing each year due to the annual load growth on the Florida Power system being currently almost twice Gainesville's 1966 peak load and in excess of Gainesville's projected 1970 peak load of 102 mw (R. 2079). Gainesville's largest 50 mw generator is dwarfed by generators on the Florida Power system and is about the equivalent of units which on the Florida Power system "are used only to meet peak

load conditions and frequently are placed on cold shutdown" (R. 396, 829).

The disparity in transmission facilities is of paramount significance since Gainesville proposes to protect against any generating deficiency on its system by relying upon Florida Power's backbone transmission network for emergency backup service. As previously noted, Florida Power owns and operates a $65 million transmission network at an annual cost of $13 million a year; whereas Gainesville does not have and does not propose any transmission except a loop around the City and a radial line to connect with Florida Power. Staff engineering witness Braitman, in his direct testimony, acknowledged the importance of transmission in "achieving reliability" by handling "emergency flows resulting from facility outages". On cross examination, he said, "in coordination, one of the biggest problems that individual systems have to work on is trying to achieve equity in the sense that the system that is providing a greater share of transmission be somehow compensated for it" (R. 1329, 1403).

Gainesville's principal witness was Mr. Joseph L. Benson, a consulting engineer formerly on the Staff of the Federal Power Commission. In his prepared direct testimony, Mr. Benson testified: "Gainesville needs and wants the Commission to direct Florida Power . . . to supply emergency backup service to Gainesville in the magnitude of Gainesville's largest generating unit or the capacity of the interconnection, whichever is smaller" (R. 308).

Mr. Ebaugh, the consulting engineer who since 1952 has designed the Gainesville system, explained that emergency backup service from Florida Power should eliminate the possibility of any generating deficiency on the Gainesville

system (R. 129-31). Mr. Kelly, manager of the Gainesville system, testified that the connection would provide Gainesville with instantaneous emergency backup service at least equal to the load on its largest 50 mw generator (R. 215-7). At the hearing before the Commission, Gainesville's attorney Mr. Spiegel stated: "We are asking number one, we can live without everything else, but number one, we are asking for emergency backup service" (R. 1683).

Thus, it is unarguably clear that the primary (Gainesville's attorney called it "number one") reason and purpose for Gainesville establishing physical connection with Florida Power's transmission facilities is to have Florida Power supply Gainesville with emergency backup service to protect against any generating deficiency on the Gainesville system.

Gainesville's principal witness, Mr. Benson, explained Gainesville would realize substantial financial savings of about $520,000 a year from a reduction in its installed reserve of generation made possible by Gainesville relying upon Florida Power's transmission facilities for emergency backup service (R. 337-8, 433-4). The $520,000 a year represents the net annual savings to Gainesville after recovering its costs in making the connection. These savings are the difference between the cost of $6.7 million of generation eliminated by the connection less the cost of a $1.5 million transmission line constructed to tap Florida Power's backbone transmission network (R. 177-8, 310-11, 337-38).

Mr. Benson testified Gainesville can also save an additional $100,000 a year in fuel costs by purchasing approximately 50% of its annual energy requirements from Florida Power's larger, more efficient generators (R. 315-6).

The evidence established irrefutably that emergency backup service will be a one way service from Florida Power to Gainesville (R. 852-4, 951-2). The Presiding Examiner explained that Gainesville can not reciprocate because the City's three largest generators "at best"[4] can supply an inadvertent or instantaneous energy transfer of only 6 mw, 3mw and 2.5 mw. The Court of Appeals agreed with the Presiding Examiner that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages of more than 400 mw and which allows a 30 to 40 mw margin of error in the calculations of its hourly requirements for spinning reserve (R. 4027). The Court of Appeals properly recognized (in ft. 10), "it is totally unrealistic to consider the City's system a significant power source [for Florida Power]."

Because Gainesville at all times will be relying upon Florida Power's transmission facilities for a minimum[5] of 50 mw of emergency backup service (whether or not energy is being transferred) to the same extent as will Florida Power for its much larger requirements and be-

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[4] The "at best" refers to after allowing 20% extra for an alleged faster rate of response for Gainesville's small generators. The figures for Gainesville's capability to supply instantaneous emergency service are determined by taking 10% of the size of the unit and adding 20% for the alleged faster rate of response. The 10% is the spinning reserve capability (i.e. the ability to supply an instantaneous transfer of energy) of units 75 mw and smaller according to the rules of the Florida Operating Committee consisting of Florida Power and the four other major utilities in peninsular Florida. For example, Gainesville's largest 50 mw generator has a spinning reserve capability of 5 mw (i.e. 10%) plus 1 mw for the alleged faster rate of response (i.e. 20% of the 5 mw) for a total of 6 mw.

[5] Actually Gainesville will receive instantaneous emergency backup service of 60 mw, the capacity of the connection, rather than 50 mw, the capacity of its largest generator. During an emergency the connection by overloading may supply even more than 60 mw (R. 4531).

cause Gainesville can not reciprocate in supplying emergency backup service, Florida Power proposed Gainesville pay its fairly allocated share of the cost of owning and operating Florida Power's backbone transmission network. Based upon 1970 load projections, Gainesville's fairly allocated share of the cost was computed to be $3.08 per kw per year times the 50 mw which Gainesville "needs and wants" and which is Gainesville's "number one" requirement. This would amount to about $154,000 a year (R. 959). Payment by Gainesville of this share of Florida Power's costs would be far less than the financial benefits of more than $620,000 a year which Gainesville, according to its principal witness Mr. Benson, will derive from the connection (R. 177-8, 337-8, 432-3).

The Court of Appeals properly agreed with the Presiding Examiner that it is necessary to have some arrangement to compensate for services rendered in excess of services received. In lieu of a cost allocation per kw per year as proposed by Florida Power, the Presiding Examiner recommended a sharing of benefits with the party receiving the greater benefit compensating the party less advantaged by an annual payment in the amount of 50 percent of the difference in total operating benefits (R. 4034).

Remarkably, and in spite of the fact emergency backup service is the primary ("number one") purpose and function of the connection, the Commission provided no compensation whatsoever for emergency backup service, yet it prescribed compensation for every other conceivable service across the connection.[6] In the case of other serv-

[6] See paragraphs 7(b), (d), (f), (g) and (8) of the Commission's Order which prescribe charges or sharing benefits whenever there is a sale or exchange of generating capacity or energy (R. 4488-9). The Commission relieved Gainesville of having to reimburse Florida

ices, the Commission's formula for compensation is based for the most part upon a sharing of benefits.

The Commission prescribed compensation for energy delivered during an emergency,[7] but erred in failing to recognize that emergency backup service is not the supplying of energy but is the furnishing of capacity in a state of readiness capable of supplying instantaneously at any instant of the day or night the energy required to protect against loss of a system's largest generator. Emergency backup service is the fire department. It is the equipment installed and in a continuous state of readiness to meet any generating deficiency. Gainesville wants to rely at all times upon Florida Power's backbone transmission network for emergency backup service whether or not energy is being transferred. Emergency energy is the "water" used to put out the "fire". The Commission ordered Gainesville to pay for the "water" but relieved Gainesville from all responsibility to contribute to the cost of the fire department.

The Court of Appeals properly recognized that the connection is not necessary or appropriate in the public interest insofar as the public served by Florida Power is concerned and will be an undue burden upon Florida Power if Florida Power and its customers have to bear the allo-

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Power for the expense of frequency control (para. (8)) when Florida Power pointed out the reimbursement would be too insignificant to justify the expense of preparing and administering a rate schedule (R. 4534).

[7] In paragraph 7(e) and (g) (1) of its Order, the Commission provided for energy transferred during the first 60 minutes of an emergency to be returned in kind or paid for at 4 mills per kwh or the seller's fuel cost plus 10%, whichever is less. As noted above, Gainesville at all times will be relying upon Florida Power for emergency backup service whether or not energy is being transferred. The transfer of energy will be relatively unimportant. At 4 mills per kwh, 50 mw for one hour represents only a $200 transaction.

cated fixed cost and carry the entire responsibility for providing the extremely valuable service of emergency backup service. The Court remanded the case to the Commission to fix some formula for reasonable compensation. The Court did not order that Gainesville be assessed for benefits received as well as reimbursement for costs, or that compensation be based on the relative benefits rather than the relative burdens. The Court left to the discretion of the Commission whether the formula should be based upon an allocation of costs or a sharing of benefits or something completely different. The case is brought to this Honorable Court without the Commission having made any attempt to fix a formula to provide reasonable compensation for emergency backup service.

ARGUMENT

I.

THE DECISION BELOW IS CLEARLY CORRECT.

It would seem obvious the Court of Appeals was clearly correct in remanding the case to the Federal Power Commission to fix some formula to compensate Florida Power for emergency backup service. Section 202(b) of the Federal Power Act requires as pre-conditions to a forced interconnection express findings by the Commission that the connection is necessary or appropriate in the public interest and not an undue burden upon Florida Power. The Court of Appeals properly concluded these statutory pre-conditions are not met without some formula to provide Florida Power with the reimbursement reasonably due it.

The decision does not infringe upon the discretion of the Commission or interfere with its exercise of whatever expertise it may have to determine reasonable compensa-

tion. The Court merely decided, and quite properly, that the Commission can not abdicate its statutory duty and responsibility, and do nothing. The decision requires of the Commission only that it act and carefully preserves to the Commission complete freedom to act, in the first instance, in any way that it may deem best.

The decision most certainly does not impose upon Gainesville a heavy "value" charge to obtain an interconnection. Gainesville's own estimate of its annual savings and financial benefits is $620,000. It should be noted that this figure is net, after, and not before, Gainesville has recovered its entire estimated cost for making the connection. Florida Power proposed an annual charge of $154,000 a year, which was based upon an allocation of costs and was not based upon benefits or the value of services received by Gainesville.

The decision most assuredly would not impose a discriminatory charge upon Gainesville. Where Florida Power has connections with other systems such as Florida Power & Light Company, Tampa Electric Company and Orlando Utilities Commission which do not provide compensation for emergency backup service, it is because each participating system has generation and through transmission facilities capable of supporting the other system. In these other interconnections emergency backup service is not a one way service because of this mutual capability to serve each other. However, in the Gainesville-Florida Power situation failure to provide any formula for compensation discriminates against Florida Power and its customers because the absence of mutuality in facilities and service capability imposes upon Florida Power the whole cost and the entire responsibility for emergency backup service.

II.

THE PETITION FOR WRIT OF CERTIORARI IS PREMATURE.

The Petition for a Writ of Certiorari is premature in that it asks this Honorable Court to review an interlocutory order of the Court of Appeals remanding the case to the Federal Power Commission. The Petition attacks the propriety of a compensation formula before the formula has been prescribed by the Commission and reviewed by the Court of Appeals. As stated in *American Construction Co. v. Jacksonville Railway Co.*, 148 U.S. 372, 384, "this court should not issue a Writ of Certiorari to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." See *Brotherhood of Locomotive Firemen v. Bangor and Aroostook R.R. Co.*, 389 U.S. 327; *Hamilton Shoe Co. v. Wolf Brothers*, 240 U.S. 251, 258.

Until the Commission has acted upon the remand, the administrative remedy and proceedings will not have been exhausted. Obviously, all of Petitioner's reasons and arguments for issuing the writ are mere conjecture and premature except as directed against a compensation formula which the Commission has yet to fix. Absent the formula, it is impossible to know whether it will seriously impair the Commission's efforts to encourage interconnections, threaten to disrupt the entire composition and structure of the electric industry, impose a heavy "value" charge which is not justifiable to join a connection, jeopardize present pooling arrangements, or have any of the other dire consequences such as are prematurely alleged in the Petition. Until the formula is fixed and the administrative proceedings concluded, it is impossible for this Honorable Court to know whether there is a sufficient question of federal law, public interest or public policy to justify issuance of a writ of certiorari.

III.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW, PUBLIC INTEREST OR PUBLIC POLICY.

The decision of the Court of Appeals does not present any important question of federal law, public policy or public interest justifying the issuance of a writ of certiorari by this Honorable Court. Allegations and argument to the contrary in the Petition for the issuance of a writ are groundless and without foundation. The Court of Appeals' decision does not threaten serious impairment of the Commission's efforts to encourage voluntary interconnection on reasonable terms, will not have an important and far-reaching impact upon the Commission's ability to discharge its responsibility of assuring an abundant supply of electric energy throughout the United States, will not discourage meaningful interconnections and coordination between systems, does not threaten to disrupt the entire composition and structure of the electric industry, and will not jeopardize present pooling arrangements. Nor will the decision impose a heavy "value" charge not heretofore thought justifiable in order to obtain an interconnection.

The truth of the matter is that the files of the Commission, which are a matter of public record, show that the Commission has approved rates to be charged for emergency backup (standby) service very similar to that which Florida Power has requested and for which the Court of Appeals has ordered the Commission to fix some formula.

Southeastern Power Administration (SEPA) is an agency of the United States Government within the Department of the Interior. SEPA, under its rate schedule SC-1 (Revised), approved by the Federal Power Commission on June 29, 1970, charges South Carolina Public Service Authority for emergency standby (backup) service at the rate of $0.25 per kw per billing month ($3.00 per kw

per year), plus 3 cents per kw per calendar day or fraction thereof for such capacity as the Authority uses.

The files of the Commission also show that on June 17, 1968, the Commission approved SEPA's rate Schedule CR-2-A for the supply of standby service to three generation and transmission cooperatives. That Schedule provides for a standby capacity charge of $2.75 per kw per year, plus 4 or 6 cents per kw per day for standby power actually delivered, plus an energy charge of 3.25 mills per kwh for all emergency standby energy. Two cooperatives are each being charged by SEPA for 100 mw and the third for 38 mw of standby capacity.

In the aforementioned order of June 17, 1968 approving SEPA's charges for emergency standby service in its Schedule CR-2-A, the Commission found that SEPA's rates would not be inconsistent with the Flood Control Act of 1944. Section 5 of that Act (16 U.S.C.A. § 8255) requires power and energy to be disposed of in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The Act directs rate schedules shall be drawn having regard to the recovery of the cost of producing and transmitting such electric energy.

Since the Commission has approved these charges for the United States Government acting by and through SEPA, how can it seriously be contended that the decision of the Court of Appeals, ordering the Commission to provide a formula to compensate Florida Power for supplying standby service, presents important questions of federal law, public interest or public policy with such dire consequences as are alleged in the Petition for a Writ of Certiorari?

Rate schedules accepted by the Commission include many others now in effect that provide some form of charge

for emergency backup (standby) service. Examples of such provisions may be found in rates filed by Virginia Electric Power Company, Central Louisiana Electric Company, Inc., Utah Power and Light Company, Nevada Power Company, and Kansas City Power and Light Company.

The Commission attempted to justify its refusal to provide any formula for compensating Florida Power for emergency backup service by espousing for the first and only time[8] the fallacious doctrine that the controlling factor in fixing compensation is not services rendered and facilities supplied but whether burdens or responsibilities are shared in proportion to size (R. 4478). This novel theory is patently erroneous because systems interconnect to obtain from each other services and facilities, and because sharing burdens or responsibilities in proportion to size can be, as it is in this case, utterly meaningless.

Interconnection is an industry practice which has developed voluntarily over many years before and since enactment of the Federal Power Act in 1935. The incentive and motivation for interconnection has been the opportunity for benefits by sharing facilities and interchange of services. The Commission seemingly has always recognized that the function and purpose of interconnection is to obtain services and benefits. In its report known as the *National Power Survey* (1964), the Commission in Part I, Chapter 12, p. 169 *et seq.* described the purposes of the many interconnections voluntarily established by the industry. The *Survey* refers repeatedly to "savings" and to "benefits". At page 173 of Part I of the *Survey*, it is stated that "whenever the parties show a willingness to work

[8] So far as Florida Power can discover, the theory that the determining factor in fixing compensation is not services rendered or facilities supplied but is proportionate sharing of responsibilities according to size has never been suggested by the Commission or by any other regulatory body or by any one in any other proceeding.

together a solution can be found to the complex problems involved *in measuring and equitably sharing the benefits* and burdens involved in such cooperative effort." (Emphasis supplied).

In the only reported decision in which the Federal Power Commission has dealt with rates for services across an interconnection, the Commission, in *Public Service Company of Oklahoma*, 25 F.P.C. 656, 659, 38 PUR (3d) 384, 388, recognized, "By the very nature of any such coordination and interchange arrangement, there is a mutual exchange of services and benefits". For determining rates and charges in an interconnection contract, the Commission said, "a-cost-of-service or rate base type of analysis, other cost analyses, and other considerations, *such as whether there is a sharing of the fruits of coordinated operations*, all play a part". (Emphasis supplied).

Interconnection is a voluntary industry practice motivated by exchange of services and benefits, and not something that has been forced upon the industry by the Commission. In fact, it was not until 1966 in its *Crisp County* decision, 67 PUR (3d) 75, and 1967 in its *City of Paris* decision, 38 F.P.C. 269, 70 PUR (3d) 475, and 1968 in its *Gainesville* decision, 40 F.P.C. 1227, 79 PUR (3d) 269, that the Commission ever was required to assert jurisdiction under Section 202(b) to compel a connection. Actually, in the case of Gainesville, Florida Power has consistently offered Gainesville a voluntary interconnection provided it be on terms fair and reasonable to Florida Power, including reasonable compensation for services rendered in excess of services received (R. 2093-2110).

Furthermore, as previously noted in the Statement of the Case, sharing responsibilities in proportion to size is

utterly meaningless in the Gainesville-Florida Power situation since Gainesville can not supply a significant amount of emergency backup service. The Court of Appeals correctly pointed out, "it is totally unrealistic to consider the City's system a significant power source."

It would seem self-evident that whether and to what extent parties to a connection should be compensated must be determined not from a meaningless proportionate sharing of responsibilities but from the very meaningful services rendered and facilities supplied. The Presiding Examiner and the Court of Appeals were correct in concluding, while public interest and not relative advantages determine whether there should be a connection, "it is still necessary [to effect the interconnection on an equitable basis] that there be some arrangement whereby services rendered in excess of services received can be compensated" (R. 4034).

Whether for any specific interconnection there should or should not be a formula for compensation such as ordered by the Court of Appeals in this case depends upon all of the circumstances of the interconnection under consideration. Each interconnection is a special situation that must be evaluated in the light of its own particular facts. It is, however, generally true, as Commissioner Carl E. Bagge of the Federal Power Commission has pointed out (address before the American Public Power Association, Legal Seminar, on November 13, 1967), a special situation exists when the interconnection is between a large system such as Florida Power (with generators of over 500 mw and a $65 million transmission system) and a small system such as Gainesville (with a largest generator of 50 mw and no transmission):

> "It is, of course, obvious that an isolated system which is unable to install units in excess of 25 or 50

megawatts is not going to be able to take full advantage of the benefit of the new technology. The very fact, however, that its largest units are in this size category tends to produce a reluctance on the part of its larger neighbors to pool with it since the great bulk of the benefits normally will flow to the small system, and from the viewpoint of the larger systems, even if the arrangements between the parties reflect this disparity, the necessary complications of any but the most rudimentary pooling arrangemnets may hardly be worth the effort."

Interconnection between a large system and a small system, or between any two systems, is not discouraged or deterred because there will be a lack of mutuality in services and benefits since this disparity can be and often is taken into account in the terms of the interconnection arrangement. To the contrary, it is the failure, in this case Gainesville's and the Commission's blind refusal, to take into account the disparity in services and benefits that discourages and deters interconnection.

Statements in the Petition for a Writ of Certiorari that none of Florida Power's contracts with other systems contain a comparable charge to that requested of Gainesville, and that it would not be consistent with industry practice to require a "value" charge from Gainesville are completely erroneous. Note the SEPA rates referred to above. Also the record shows that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity of service or mutuality of benefits from an interconnection. One such occasion was with Florida Power & Light Company which paid all of the fixed charges and administrative costs of a connection until it became mutually beneficial. The other occasion was with Gulf Power Company to whom Florida Power still is paying $5.80 per kw per year for 12 mw of

demand for a connection which Gulf Power installed for the benefit of Florida Power (R. 833-834). The fact that there is not a similar charge for connections between Florida Power and other systems where there is relative mutuality in facilities and service capability is totally irrelevant to the Florida Power-Gainesville situation where there will not be mutuality in services rendered and facilities supplied.

It likewise is irrelevant to this proceeding to cite the fact there are other isolated electric systems which are not parties to an interconnection agreement. There may or may not be good reasons why other systems remain isolated. It may or may not be economically practical to interconnect a particular system. If practical to interconnect, a formula for compensation such as that ordered by the Court of Appeals in this case may or may not be called for by the circumstances of the particular situation.

The case for a Florida Power-Gainesville interconnection should be judged only in the light of its own particular facts. When so judged, it is obvious that the decision of the Court of Appeals is clearly correct, that it does not call for a heavy "value" charge, and that it leaves the Commission ample latitude and precedent to fix a compensation formula that will be fair and reasonable to both parties. It is equally obvious that fixing a formula for compensation that will be fair and reasonable to Florida Power and Gainesville does not raise a question of federal law, public interest or public policy justifying the issuance of a writ of certiorari by this Honorable Court.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied. But should this Honorable Court grant the petition for certiorari, it is respectfully requested that this Honorable Court grant Florida Power Corporation's cross-petition for a writ of certiorari filed herewith.

Respectfully submitted,

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August 27, 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioners,*

v.

FLORIDA POWER CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF OF PETITIONERS

This reply brief is addressed to two of the major premises on which the Brief in Opposition filed herein by Respondent, Florida Power Corporation, is based:

1. The first is Florida Power's claim that the Fifth Circuit has required only that the Federal Power Commission (Commission) prescribe reasonable compensa-

tion as a condition of the interconnection and not that such compensation must contain an allowance for benefits received as well as reimbursement for costs incurred (see, e.g., Br. in Opp., pp. 2, 11-12). This claim patently misreads the holding of the Court below, as is obvious from (1) the Fifth Circuit's expressed rejection of the Commission's policy of prescribing reasonable compensation based upon proportionate utility responsibility under which Florida Power was to be reimbursed for all costs incurred as a result of the interconnection directed by the Commission (Pet. App. pp. 14a-15a) and (2) the Fifth Circuit's insistence that that policy "really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefits but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation." (Pet. App. p. 15a.)

The same misreading of the holding below underlies Florida Power's claim (Br. in Opp., p. 13) that the Petition is premature. While, as Florida Power urges, the Commission has not yet held the further proceedings directed by the Fifth Circuit for fixing compensation in accordance with the principles laid down by that Court, Gainesville's position is that the Fifth Circuit erred in refusing to defer to the Commission's expertise, in rejecting the Commission's policy of prescribing reasonable compensation based on proportionate utility responsibility and, accordingly, in directing such further proceedings. In other words, the Petition brings into question the validity of the principles laid down by the Fifth Circuit for the Commission to follow on remand. And since under Gainesville's view, there is no need for such further proceedings, the Petition clearly is not premature.

2. The second is Florida Power's thesis that the emergency backup service directed by the Commission is "the furnishing of capacity in the state of readiness capable of supplying instantaneously at any instant of the day and night the energy required to protect against loss of a system's largest generator." (See, e.g., Br. in Opp., p. 10.) This thesis is expressly contradicted by the Commission's statement, which it took pains to emphasize, that its order imposed no obligation upon Florida Power to provide any specific firm power service to Gainesville (Pet. App. p. 28a, fn. 4). Rather, under the Commission's order, Florida Power is required to provide emergency backup service to Gainesville only when, as, and if available. As shown in the Petition (at p. 16, fn. 13), emergency service on such a limited basis is wholly adequate for Gainesville's purposes.

The absence of any firm obligation upon Florida Power to provide emergency service to Gainesville relieves Florida Power of any need to have capacity available at all times capable of instantaneously supplying energy in the event of an emergency. This distinguishes the present situation from those referred to by Florida Power (Br. in Opp., pps. 14-16). Each of the situations cited by Florida Power, including that of Southeastern Power Administration, involved a *firm* obligation to provide emergency service; accordingly, a standby demand charge was not only appropriate, but required under standard rate-making principles.

3. The importance of the Commission's decision to the development of interconnected regional electric operations is underlined by the power shortage and "brownouts" which recently hit the Eastern Seaboard as a result of a combination of hot weather and certain

large generators being out of service for maintenance or breakdown. All the East Coast interconnected systems responded by exporting the maximum power possible (to the extent even of cutting back on service in their own territories) to the damaged systems. See *The Wall Street Journal,* September 23, 1970, page 2; September 24, 1970, p. 4; September 25, 1970, p. 4.

Interconnection makes possible such joint action, and the terms for such interconnections are now governed by the Commission's ruling in the instant proceeding that compensation among the connecting utilities should be on the basis of proportionate utility responsibility and not on an evaluation of relative benefits. If the Fifth Circuit decision stands and the matter goes back to the Commission for years of further litigation, no guidelines will exist in the meantime for the determination of the terms and conditions under which utility systems are to be interconnected and existing interconnections enlarged.

For the foregoing reasons, as well as those set out in the Petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioner*,

v.

FLORIDA POWER CORPORATION, *Respondent*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE AMERICAN PUBLIC POWER ASSOCIATION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioners,*

v.

FLORIDA POWER CORPORATION, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The American Public Power Association respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae* in support of the petition for certiorari of Gainesville Utilities Department and the City of Gainesville, Florida. The at-

torneys for the petitioners have consented to the filing of this brief but the attorneys for the respondent, Florida Power Corporation, have refused.

The applicant, American Public Power Association, a national service organization, has an interest in this case in that it represents more than 1,400 local, publicly owned electric utilities in 48 states, Puerto Rico, the Virgin Islands and Guam, including the petitioners, Gainesville Utilities Department and the City of Gainesville, Florida. Many of these publicly owned utilities are directly and seriously affected by the decision in the court below.

The basic issue presented in Gainesville's petition for certiorari is the terms and conditions which are to prevail for interconnection of facilities between a large and small electric utility pursuant to Section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)). The court below adopted a rule of payment between the interconnecting systems which is based upon the benefits which accrue to each and set aside the Commission's determination that payments should be set according to the responsibilities borne by each system and the costs associated therewith. *Florida Power Corporation* v. *Federal Power Commission,* Op. No. 27404, (5th Cir., May 1, 1970).

The decision of the court below presents an important question of federal law which has not been, but should be, settled by this Court. If allowed to stand, without review, the decision will leave in a state of confusion interconnection negotiations underway in many parts of the country at the present time. Furthermore, the decision will seriously impair the prospects for interconnection and coordination between

many large and small electric utilities in the future. These are needed to improve service reliability and prevent blackouts, voltage reductions and other disruptions.

Workable interconnections and coordination agreements are an absolute necessity for the survival of many dispersed, publicly owned utility systems which meet an important portion of the nation's electric energy needs. Many of these systems are members of A.P.P.A. The Association therefore respectfully requests this Court to grant it permission to file its annexed brief *amicus curiae* in support of Gainesville's petition for writ of certiorari.

Respectfully submitted,

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IN THE

Supreme Court of the United States

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GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioners,*

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF OF THE AMERICAN PUBLIC POWER ASSOCIATION AS AMICUS CURIAE

By leave of this Court, the American Public Power Association files this brief as *amicus curiae,* prior to consideration of the petition for writ of certiorari of petitioners Gainesville Utilities Department and the City of Gainesville, Florida.

INTEREST OF AMICUS CURIAE

The *amicus curiae,* American Public Power Association, a national service organization, has an interest in this case in that it represents more than 1,400 local, publicly owned electric utilities in 48 states, Puerto Rico, the Virgin Islands and Guam, including the petitioners, Gainesville Utilities Department and the City of Gainesville, Florida.

Many of these publicly owned utilities are isolated systems which desire to interconnect their facilities with those of large, investor-owned electric utilities to improve the quality of service offered to their customers. Others are seeking to enlarge and improve existing interconnections. These publicly owned electric utilities will be directly affected by the Court's decision whether or not to review the decision of the court below, which deals with the terms and conditions for ordering interconnection of electric utility systems.

ARGUMENT

The court below has decided an important question of federal law which has not been, but should be, settled by this Court. The *amicus curiae* adopts in substance the brief of petitioners. The *amicus curiae* does not propose to argue the merits of the case but to identify the issues of nation-wide importance of this case and their impact on all utility systems which demonstrate the need for this Court to grant Gainesville's petition for certiorari.

The basic issue presented in Gainesville's petition for certiorari is the terms and conditions which are to prevail for interconnection of facilities between a large and small electric utility pursuant to Section 202(b)

of the Federal Power Act (16 U.S.C. 824a(b)). The court below adopted a rule of payment between the interconnecting systems which is based upon the benefits which accrue to each and set aside the Commission's determination that payment should be set according to the responsibilities borne by each system and the costs associated therewith. *Florida Power Corporation* v. *Federal Power Commission,* Op. No. 27404, (5th Cir., May 1, 1970).

The decision rendered below seriously limits the Federal Power Commission's discretion to determine, based upon its expertise, the terms and conditions of interconnection between electric utilities, a responsibility which is specifically vested in the Commission by Section 202(b) of the Federal Power Act.[1]

The decision establishes a rule that any interconnection between large and small electric utility systems benefits only the smaller system. More importantly, it holds that the smaller system, in addition to bearing its share of the cost of interconnection, must also pay the larger system for the benefits which only the smaller system is deemed to gain by interconnection (an annual stand-by demand charge in the instant case).

We submit that such a novel rule, reversing the Commission's determination, is wholly inappropriate and is such an important question of federal law that it must be settled by this Court. The benefits of interconnection accrue to both large and small utilities, as specifically found by the Commission in this case (*Gainesville Utilities Dept., et al.* v. *Florida Power Corp.,* Docket No. E-7257,

[1] This point is developed in more detail in Part IV of this brief.

FPC Opinion No. 550, Nov. 5, 1968, *rehearing denied*, FPC Opinion No. 550-A, Jan. 2, 1969; see Appendix B to the Gainesville petition for certiorari). If such a rule is not reviewed by this Court but is allowed to stand in its present form, many areas served by small, publicly owned electric utility systems will be deprived of reliable electric energy, and customers of large, investor-owned electric utilities will be forced to forego the benefits which flow from strong, interconnected electric energy systems. Furthermore, the decision reached by the FPC in the Gainesville matter has provided important guidelines for interconnection which are being followed in many parts of the country. The court's decision below throws many of these plans into a state of confusion which can only be clarified by granting petitioner's petition for writ of certiorari.

I

GENERAL IMPACT OF THE DECISION BELOW ON ISOLATED UTILITY SYSTEMS

There are over 2,000 local, publicly owned electric utility systems in the United States, which together supplied electricity to 9,100,000 customers in 1967. These customers constituted 13 percent of the nation's total consumers of electricity. With a total installed generating capacity of over 29,000,000 kw in 1967, the publicly owned systems accounted for 14 percent of the total sales of kilowatt-hours of electric energy.

These small, publicly owned utilities are constantly attempting to improve the quality and economy of service they render through interconnection and coordinated operating arrangements with larger systems. The principle of strong interconnections and coordinated

operations among utility systems was endorsed in the Federal Power Commission's *National Power Survey,* 1964. After the *National Power Survey* came the Northeast power blackout. The Commission studied the problem and concluded in its report, *Prevention of Power Failures,* 1967, that stronger interconnected operations were necessary to prevent future blackouts and noted that problems still remained in determining the method of allocating the costs of interconnections. Furthermore, the Court of Appeals for the Fifth Circuit has recently stated that, "Interconnection has become a fact of life to meet needs, scheduled and emergency, of localized areas and large regions." *Florida Power and Light Co.* v. *F.P.C.,* Op. No. 24956, at p. 5 (5th Cir., July 13, 1970).

This goal of strong, reliable, interconnected power systems would be seriously hampered, if not rendered unattainable, if the decision of the court below were allowed to stand without review by this Court. Interconnection depends substantially on recognizing that both parties to an interconnection will contribute benefits to the customers of each other. Interconnection is not a one-way street requiring a small utility to pay sums to the large utility beyond its allocated share of the costs of interconnection.

For example, in the present case the Commission found that:

1. Both parties will benefit financially from coordinated planning and more intensive utilization of existing generating resources;

2. Florida Power will acquire an additional energy source only 15 miles from its Archer substation which serves substantial loads in the Gainesville

area, whereas its closest generating facility now is 75 transmission miles away and;

3. Florida Power's system reliability will be improved.

The court below, however, summarily dismissed these benefits, substantiated by staff studies of the Federal Power Commission, as "illusory."

The effect of the decision of the court below is to disregard one of the most important benefits that a small utility can offer a larger one, namely, that customers of the large utility, located near the small utility, can expect greater reliability of service through interconnection. Examples of specific instances where small utilities have benefitted larger utilities when interconnected are provided for the Court's information later in this brief.

Aside from the merits of the particular case at hand, the effect of the decision of the court below is to cast grave uncertainty on the guidelines established by the FPC in the Gainesville case. The Commission in its decision established a policy of interconnection based upon the cost burdens borne by each of the parties, and this policy is being used as a guideline throughout the country in planning and negotiations for interconnection arrangements. It is a practical policy and one that administrative agencies can effectively apply. To reopen the question now, which is the effect of the decision rendered below, will hamper the badly needed expansion of interconnected and coordinated operations in the electric utility industry required to minimize power shortages and blackouts.

II

INTERCONNECTION AND COORDINATION ARRANGEMENTS ARE CURRENTLY UNDER WAY WHICH WILL BE SUBSTANTIALLY AFFECTED BY THE DECISION RENDERED BELOW

The FPC's order issued in the instant case has had a strong impact upon the planning of local, publicly owned electric systems in considering their long range needs for power supply.

For many years, large numbers of the publicly owned systems have either bought all of their power at wholesale from large power companies, generated their power in electric isolation from nearby power companies because they were unable to obtain reasonable interconnection contracts, or operated interconnected with companies on terms generally less favorable than the companies had established in their interconnection arrangements with other investor-owned systems.

The Commission's determination in the Gainesville matter was of significance because the FPC staff made a detailed analysis of the way in which the benefits would flow from interconnected service. They showed that proportionate areas of both Florida Power's and Gainesville's systems would benefit approximately equally even though the interconnection involved a relatively small system and a very large system.

Although each interconnection must be evaluated on its own merits, the procedure used by the FPC staff in Gainesville-Florida Power could be applied to many other potential interconnections. It has also provided a basis for examining methods by which groups of municipally owned systems could interconnect with other larger systems and operate in parallel to better serve all customers in a particular area.

In North Carolina, the Electric Power in Carolina program (EPIC) has been proposed by the municipal electric systems and the electric cooperatives in the State.[2] This planning project would involve large-scale generation and transmission throughout the State of North Carolina providing for the total future loads of the municipal and rural electric cooperative systems in the State. Maximum economic gains and minimum duplication of existing facilities can only be accomplished if the planned projects can be closely coordinated with the large investor-owned systems in the area. The Gainesville-Florida Power decision of the FPC prior to the decision of the court below, favorably influenced planning of the EPIC group, since it assured the municipal and cooperative systems that coordinated operation could be effectuated without penalizing smaller systems. The decision of the court below has substituted grave uncertainties for this assurance.

A group of cities in Northern California (Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah) is now planning future power supply.[3] These cities are either served at wholesale by the Pacific Gas and Electric Company or by the U.S. Bureau of Reclamation. They will soon require power in addition to that which they have been able to obtain from the Bureau of Reclamation. They are unwilling to remain in any position where they will only be power purchasers. By joint financing they could construct large-scale power plants and operate them in coordination with the Bureau of Reclamation, Pacific Gas and Electric Com-

[2] *Public Power*, American Public Power Association, December, 1969, p. 12.

[3] *Ibid.*, June, 1969, p. 13.

pany and other large systems in the region. To do this successfully will require close coordination with all the major power systems, and this coordination, in turn, will depend on the formula for calculating interconnection costs and benefits—that of the FPC or the diametrically opposite one of the court below.

Efforts are now under way to establish a regional power pool in New England, an area characterized by high electric rates and small generating stations.[4] The question involved in the petition for writ of certiorari is central to resolution of the compensation arrangements, the principles of which have been preliminarily accepted by all New England electric utilities. These agreed upon arrangements follow the principles of the Commission's Gainesville decision. The New England Power Pool ("NEPOOL") solution can become a pattern for the formulation of power pools in other parts of the country. If petition for writ of certiorari is not granted, this possibility will be jeopardized, or at least delayed for many years while the Commission restudies the Gainesville case on remand.

The impact of the Gainesville decision is clear when the 1968 draft of the regional New England Power Pool is compared with the 1970 Agreement. The 1968 draft was submitted to the FPC before its decision in Gainesville and the 1970 Agreement after the FPC decision.[5] The "Before" draft would require small

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[4] *Ibid.*, February, 1970, p. 20.

[5] (i) "Before" Draft: Form of Power Pool Agreement as Proposed by NEPOOL Committee; December 20, 1968.

(ii) "After" agreement: Interim NEPEX Power Exchange Agreement and Letter of Intent New England Power Pool: June 1, 1970, filed with FPC as a rate schedule May 21, 1970.

utilities systems to pay one-half of their estimated benefits from interconnected pool operations over to the large utilities, and this was rejected by many small utilities. The "After" agreement requires a pro-rata fair sharing of the cost burdens of pool operation and transmission, and has been accepted by all significant utilities, as a policy matter, subject to finalizing unresolved issues and details in an acceptable package.

The "Before" draft was dated December 20, 1968, and did not reflect the principles of FPC's Gainesville decision. This draft (Section 11.1) specifically required a smaller utility to pay sums to larger utilities because it would "realize benefits . . . while . . . avoiding costs . . . which such Participant would be forced to incur under any arrangement which it might enter into as an alternate to participation in NEPOOL." These "benefits" would be measured "on the basis of a comparison of the situation" as between operating in NEPOOL and outside NEPOOL.

This benefits theory of the "Before" draft was flatly rejected by most of the 80 municipal and cooperative utilities in New England. A year of negotiations ensued among the parties, with participation of the staff of the Federal Power Commission, and these produced the "After" agreement. The central compensation charge is that every utility in the pool will pay a pro-rata share of the total cost of the interconnected regional transmission grid necessary to connect all significant generation facilities, and these payments will be received by the systems owning the transmission facilities. In exchange, all systems will have the right to use the regional transmission system for purchases, sales, and joint generat-

ing projects. In addition, all power supply utilities will provide equalized capacity reserves (*i.e.*, they will keep as reserve an approximately equal percentage of capacity in excess of loads). The reversal of the Commission's decision by the court below, in the Gainesville case, will seriously hamper the application of these principles, established in the NEPOOL Agreement, from being used elsewhere.

The problems discussed above were anticipated by the Commission in considering Florida Power's requested stand-by charge in the instant case:

> ". . . [It] would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units. Without such a demand charge, Gainesville could participate more fully in coordinated planning including staggered construction with Florida Power and other systems in Florida to the mutual benefit of all such systems." (p. 13)

Unless a smaller utility seeking interconnection is recognized as at least being capable of contributing benefits to the larger system through interconnection, its incentive to interconnect with private utilities will be seriously diminished. Instead, the smaller systems will need to look to establishing their own separate, duplicative transmission systems, whenever possible, in order to obtain the benefits of interconnection. Where this is not possible, smaller isolated systems will continue to construct isolated high-cost generation facilities in order to meet increasing loads. Often these facilities will not be able to take advantage of the economies of scale of larger units and may have an adverse impact on the surrounding environment.

III

SMALL UTILITIES DO CONTRIBUTE SUBSTANTIAL BENEFITS TO LARGE UTILITIES [6]

We turn now to instances where large systems have benefited from interconnection with smaller systems. These examples do not constitute an exhaustive list but only represent the various types of assistance small systems are capable of rendering when interconnected to larger systems.

Kansas Power and Light Co. (generation capacity 842,000 kw) is interconnected with the Board of Public Utilities, McPherson, Kansas, generation capacity 51,000 kw). During the summer of 1969 Kansas Power and Light sold to McPherson 5,056,000 kwh but purchased over 15,200,000 kwh to help meet its loads.

Holyoke Gas and Electric Department, Massachusetts, (generation capacity 42,000 kw) is interconnected with the Connecticut Valley Electric Exchange ("Convex") which has generation resources in excess 3,000,000 kw. Holyoke's 10,000 kw gas turbine generator, which was expected to be run only 300 hours per year when installed for local emergency and peaking power, was called upon by the "Convex" central dispatching agency for a total of 860 hours in 1969 to help meet area-wide loads.

Northern States Power Company, Minnesota, is interconnected with several local publicly owned power systems, many of which have generating capacities of

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[6] Statistics on generating capacity derived from *Public Power, Directory Issue,* American Public Power Association, January 1970, and *Electrical World Directory of Electric Utilities,* McGraw-Hill, New York, 1969 and 1970. Statistics on power sales are based upon reports from individual utilities.

less than 2,000 kw. After a failure at its Allan S. King plant in June 1970, Northern States called upon these small systems to supply it with as much power as possible to meet loads. This assistance has continued intermittently through the summer and contributed to averting a widespread power shortage.

Paris, Kentucky, (generation capacity of less than 5,000 kw) is interconnected with Kentucky Utilities Company (generation capacity 705,000 kw). In the summer of 1969 Paris was required to operate its plant to assist Kentucky Utilities in meeting peak loads. The same assistance is expected to be rendered again this year.

Northwestern Iowa Power Cooperative ("NIPCO"), a large utility system, lost a major interconnection at Sioux City on July 17, 1970, and asked all municipal systems in Iowa with which it was interconnected to turn on their generators. These generators are considered only as standby energy sources, and as a result of their ability to deliver power to "NIPCO," service was maintained without interruption.

While the examples cited above represent only a few of the instances where small utility systems are able, through interconnection, to assist very large systems in meeting loads beyond the capacity of any individual system, they do point out the essential feature of strong interconnections. All parties assist each other. Benefits accrue no matter how large or small a particular system may be. They are neither insignificant nor "illusory" as the court below would have it.

IV

THE DECISION BELOW DEPRIVES THE FPC OF ITS AUTHORITY TO DETERMINE THE TERMS AND THE CONDITIONS OF INTERCONNECTION

Congress enacted Parts II and III of the Federal Power Act as part of the public holding company legislation of 1935 (49 Stat. 487; 16 U.S.C. 824-824(h), 825-825(r)). This legislation constituted a comprehensive effort to bring the electric power industry under effective federal regulatory control. Among other things, Congress recognized that the goal of an abundant supply of electric energy is attainable only through proper utilization and conservation of the nation's natural resources and that extensive interconnection and coordination of facilities for the generation, transmission and sale of electric energy is required to achieve this goal. Thus, it enacted Section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)), which provides:

> "Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. *The Commission may prescribe the terms*

and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them." (Emphasis added.)

The principles of administrative law are settled that language, such as that contained in Section 202(b), places an obligation on the Federal Power Commission to exercise its expertise and judgment to determine the terms and the conditions of any interconnection it may order. (*Board of Trade of Kansas City* v. *United States,* 314 U.S. 534, 546-48 (1942).) Moreover, courts, in reviewing administrative decisions which establish rates, are limited in their review, and an administrative body must be accorded latitude to exercise its power and discretion to reconcile diverse and conflicting interests. (*Permian Basin Area Rate Cases,* 390 U.S. 747, 767 (1968); *FPC* v. *Natural Gas Pipeline Co.,* 315 U.S. 575, 585 (1942).)

In this case, the Commission, in denying Florida Power's request that Gainesville be assessed a standby demand charge for emergency reserves, whether used or not, specifically found that the benefits from interconnection would accrue not only to Gainesville but also to Florida Power. On page 13 of the Commission's opinion, it stated, "The evidence before us shows that Gainesville will be contributing its proportionate share of instantaneous emergency service and installed generating capacity, including reserve capacity."

The Commission determined that the correct method of allocating the costs of interconnection was on the basis of the *responsibilities* borne by the parties:

"As we have explained, that sharing must be based upon, and follow, the proportionate burdens each

> system places upon the interconnected system networks, not the benefits each expects to receive." (p. 12)

Yet the court below dismissed the notion that Florida Power would benefit from the interconnection. It called the benefits specifically identified by the Commission "largely illusory" (p. 16) and concluded:

> "The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation." (p. 17)

The court below disregarded the careful examination the Commission made of the results expected from interconnection and seized upon a "gross size" test for determining whether both a large and small utility would benefit from interconnection. This "gross size" test consists only of an overall measurement of the power capabilities of the two systems seeking interconnection. If one is substantially larger than the other, the court would summarily conclude *ipso facto* that only the smaller system will benefit from interconnection, and hence the smaller must pay additional fees to the larger system in addition to paying its share of the allocated costs of the interconnection. However, as can be seen from the examples cited above, benefits do *not* run only from large to small utilities. Small systems play an important role in providing electrical service to customers of large systems when they are interconnected.

Beyond the merits of the test adopted by the court below, its ruling results in a serious limitation of the Commission's duty to utilize its expertise and exercise

its judgment in the field of electric energy and forces the Commission to abrogate its responsibility as a regulatory agency. Henceforth, small electric utilities involved in Section 202(b) proceedings can only expect the Commission to compare their total generating capacity with that of a larger system. Upon finding a significant disparity, the FPC will be obliged to determine that the small utility can in no way benefit the large utility or its customers and therefore direct that it must pay tribute to the larger system for interconnection beyond the smaller utility's contribution of its share of the costs of interconnection and energy used. The Commission would have little if any latitude to investigate the facts of interconnection in any particular case.

CONCLUSION

The impact of this decision on the negotiations and plans for interconnection among utilities across the nation will be substantial. The broad policy announced by the court below regarding the authority of the Federal Power Commission to establish the terms and conditions for interconnection and those terms and conditions set by the court in this instance raise important questions of federal law which must be settled by this Court. Therefore, the petition for writ of certiorari of petitioner Gainesville in this case should be granted.

Respectfully submitted,

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Section 313(b), 16 U.S.C. 825*l*(b) 2, 23, 32

MISCELLANEOUS:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA,

Petitioners,

v.

FLORIDA POWER CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit (R. II 489-503)[1] is reported at 425 F.2d 1196. The main opinion and opinion on rehearing of the Federal Power Commission (R. I 352-381, 409-417) are reported at 40 FPC 1227 and 41 FPC 4, respectively.

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[1]The printed record before this Court consists of:

(a) A joint appendix volume printed for use before the Court below. This volume is cited as R. I.

(b) An oversized volume of exhibits submitted in the Court below pursuant to Rule 30(e) of the Federal Rules of Appellate Procedure.

(continued)

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 1, 1970 (R. II 504). This Court granted certiorari on October 26, 1970 (R. II 505). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b).

STATUTE INVOLVED

The pertinent provisions of Section 202 of the Federal Power Act, 49 Stat. 847, as amended, 16 U.S.C. 824a are set out in the Appendix, *infra*, pp. 39-40.

QUESTION PRESENTED

Whether, in directing a large interconnected electric utility to interconnect with a smaller system under Section 202(b) of the Federal Power Act, the Federal Power Commission erred in not including, in the "compensation * * * reasonably due" to such large system, an allowance for net benefits received by the smaller system as a result of the interconnection, in addition to reimbursement for costs incurred by the large system.

Each of the exhibits included is marked by a margin Tab to help locate it. Citations to these exhibits are by exhibit numbers.

(c) A supplemental volume including additional excerpts from the record before the Commission, together with (1) a list of relevant docket entries, (2) the opinion and judgment below, and (3) this Court's order granting certiorari. This volume is cited as R. II.

STATEMENT OF THE CASE

Pursuant to the complaint filed by Gainesville Utilities Department and the City of Gainesville, Florida[2] the Federal Power Commission ("Commission") by order issued under Section 202(b) of the Federal Power Act, App., *infra*, pp. 39-40, directed Florida Power Corporation ("Florida Power"), a "public utility" subject to Commission regulation under that Act, to establish physical connection with facilities of Gainesville, a municipally-owned electric system, and to sell to, and exchange energy with, Gainesville upon terms and conditions prescribed in that order, Gainesville to provide or pay for all interconnecting facilities. On appeal filed by Florida Power, the Court of Appeals affirmed the order of interconnection but set aside provisions as to compensation due to Florida Power on the ground that the Commission's failure to include therein an allowance for benefits received by Gainesville, in addition to reimbursement for costs incurred by Florida Power, was based on incorrect and unsound policy. The pertinent facts may be summarized as follows:[3]

Florida Power is the second largest electric utility in Florida and serves a 32-county territory in west and central Florida some 350 miles in extent. It had a peak load in 1965 of 1003 megawatts[4] (mw) occurring in the winter and a generating capability of 1354 mw (Exhibit 96, Sheet 5).[4a]

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[2]Collectively referred to as Gainesville.

[3]Since there is no issue presented in the instant proceeding with regard to the Court of Appeals' rulings (1) that Gainesville is a "person" entitled to seek relief under Section 202(b), and (2) that the Commission properly declined to require Gainesville to agree to a division of retail service areas as a condition to the interconnection, references to these matters, which occupied a substantial part of the attention of the Commission and the Court of Appeals, have been kept to a minimum.

[4]A megawatt is the equivalent of 1000 kilowatts (kw) or 1,000,000 watts.

[4a]The statistics in the record reflect operations for the year 1965 or, in some cases, 1966 (R. I 354, fn. 1).

Florida Power is interconnected with the Georgia (Georgia Power Company) and Florida (Gulf Power Company) affiliates of the Southern holding company system for the mutually advantageous use and exchange of power and for emergency purposes (R. I 317).

Florida Power is a member of an interconnected group of five electric utilities in Florida[5] which operate in parallel with a free flow of electricity over their transmission systems. They thereby coordinate the operation and maintenance of generating units and deliver large blocks of energy to each other during emergencies (R. I 316). Interconnected operations also are coordinated through the Florida Operating Committee, composed of representatives of the five utilities. The Committee establishes the operating reserves requirement for the group as a whole, and apportions responsibility therefore to each utility through a uniform formula[6] (R. I 316). These operating reserves are automatically brought into generation to supply power to the interconnected transmission system whenever an emergency occurs,

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[5]This interconnected group consists of:

Name	1965 peak customer load:
City of Orlando	180.0 MW
City of Jacksonville	506.7 MW
Tampa Electric Company	726.0 MW
Florida Power Corporation	1003.0 MW
Florida Power & Light Company	2529.0 MW

(Exhibit 96, sheet 5)

[6]The group must keep a total "ready reserve" (generating capacity available within ten minutes) of one and one-half times the largest unit operating on the interconnected systems. Of this ready reserve, two-thirds must be "spinning reserves" (reserve capacity actually spinning on the line and available to take load immediately) so that there are always available spinning reserves equal to the capacity of the largest generating unit operating. The allocation formula pro-rates responsibility for these reserves on the basis of comparative customer peaks and largest units of each utility (R. I 164). See Committee minutes in Exhibit No. N-132 for detailed studies of operations and criteria.

such as the forced outage of a generating unit, requiring an instantaneous increase in energy flow to any individual system; and these operating reserves thereby stabilize the interconnected electric operations.

Each of the 5 utilities is enabled by their interconnected operations to install larger, more efficient generating units and to carry smaller installed reserves than if they were operating in isolation (R. I 317). In addition, Florida Power has made separate contracts with Tampa and Orlando for the purchase of firm power to coordinate installation and maintenance of units utilizing the interconnected Florida transmission system (R. I 317).

Gainesville owns and operates an isolated electric utility serving a population of some 60,000 in and about the City, some two-thirds of the population of rural Alachua County in Central Florida. Its peak load, which occurs in the summer, was 51 mw in 1965 (R. I 354). Its load is growing at the rapid compound rate of 15% per year, doubling every five years, which is twice the national average growth rate, and its 1970 peak was anticipated as 102 mw (R. I 354). It is thus under constant pressure to expand its generation through construction of the largest, most economical units possible. In 1965 its total generating capacity was 108 mw (R. I 354).[7]

Gainesville desired to interconnect with the Florida transmission grid in order to obtain the economies and other interconnection benefits available to members of the Florida interconnected group, subject to bearing its share of pool burdens. It was unable to negotiate a satisfactory interconnection agreement with either Florida Power or Florida

[7]Pending the outcome of this case, Gainesville continued to expand on an isolated basis. It has now installed three 15-mw gas turbine generators and is constructing 81 mw steam generator for 1972 operations, after which it will have total capability of 234 mw. Its 1970 peak was 96 mw.

Power & Light Company.[8] In 1965, it applied to the Commission for an order under Section 202(b), App., *infra*, pp. 39-40, directing Florida Power to interconnect, Gainesville proposing to construct 15 miles of transmission line to absorb the full cost of the interconnecting facilities. Gainesville also alleged unlawful discrimination and preference by Florida Power under Sections 205 and 206 of the Act.

Following extensive hearings, the Presiding Examiner issued his Initial Decision (R. I 313-341), in which he required both utilities to interconnect and provide emergency services to each other up to the full 60 mw capacity of the interconnecting facilities. He found, *inter alia*, that (R. I 321):

> "Witnesses for Gainesville, Florida Power and Staff are in agreement that the proposed interconnection is desirable and in the public interest. * * * If Gainesville were to maintain its isolated status it would be required to install duplicating additional generation of its own in order to assure its customers of firm service, although not without some curtailment because of reduction in frequency in the event of loss of its largest unit. Independent maintenance of sufficient installed capacity (fn. omitted) to carry peak-hour load in the event of an outage, to the extent of the loss of Gainesville's largest unit, would surfeit the area with capacity far in excess of the amount necessary at any one time, an obviously wasteful and uneconomic process."

The Initial Decision would require Gainesville to maintain spinning and ready reserves in accordance with procedures established by the Florida Operating Committee (R. I 339) and to maintain minimum installed reserves based upon the criteria of the Florida interconnected group.

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[8]Gainesville had also sought an interconnection with Florida Power & Light Co. as well as Florida Power (R. I 56, 276; Certified Record pp. 1480-81).

In fixing the schedule of charges to be made for services provided under the interconnection, the Examiner declined to allow the $3.08 per kw per year standby charge, i.e., for allegedly keeping facilities available to provide "instantaneous" emergency service, pressed by Florida Power for emergency back-up service, but provided instead for a splitting of the operating benefits resulting from the interconnection (R. I 333, 340).

In its Opinion and accompanying order here under review (R. I 352-381, 409-417) the Commission found with regard to the interconnection itself (R. I 357):

> "* * * this record affirmatively shows that the proposed interconnection between [Florida Power] and Gainesville is desirable and in the public interest. Each system will gain financial and engineering benefits from the interconnection. The record also shows that the ordered interconnection will not place an undue burden upon Florida Power, will not require [Florida Power] to enlarge its generating facilities, and will not impair Florida Power's ability to render adequate service to its customers."

As to the claimed standby charge, the Commission held (R. I 364):

> "* * * the record in this proceeding does not establish any satisfactory justification for the imposition of [the $3.08 per kw per year] * * * demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate."

In this regard, the Commission stated as a general proposition that:

> "* * * whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in

> order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network." (R. I 358).

The Commission pointed out that "Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection" without any "direct cost to Florida Power" (R. I 361, 368), and further that "neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other" (R. I 363, fn. 4). Then applying its rationale to this case the Commission recognized that Gainesville would operate electrically as part of the Florida interconnected group and therefore required that Gainesville:

> "* * * own or secure from others generating capacity equal to or greater than 115 percent of the City's estimated annual peak hour demand. Under finding (7)(c), Gainesville must maintain ready reserves up to a limit of 15 percent of the City's estimated annual peak hour demand and up to a limit of 10 percent of that demand for spinning reserves. In the light of current reserve practices being followed by Florida Power and other members of the Florida Operating Committee, these requirements will insure that Gainesville discharges its utility service obligations to provide sufficient generating capacity and

resources, installed and operating, to supply the needs of its utility consumers." (R. I 360-361).

Also pointing to schedules of charges provided,[9] the Commission went on to comment that these charges

> "* * * will adequately compensate both Florida Power and Gainesville in providing the services. The reserve capacity which we are requiring Gainesville to maintain will assure that Gainesville does not unduly burden Florida Power. The record in this case demonstrates that Gainesville will place no disproportionate burden or reliance on the facilities of the Corporation and thus should not be penalized either in terms of greater reserve capacity requirement than that carried by the other systems in the coordinating area or in terms of a demand charge." (R. I 363).

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[9]With the exception of the claimed standby charge, the Commission adopted, generally with the parties' acquiescence, the Examiner's recommendations as to the compensation to be paid for services to be provided under the interconnection with minor changes not here relevant (R. I 361-362). With reference to the emergency service, the Commission provided (R. I 377-378):

> "(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer * * *. Such service, if provided beyond the end of a 60-minute period shall be treated as Scheduled Electric Service * * *.
>
> "(g) Payments: Except for payments related to Economy Energy transaction, * * *, payments shall be as follows:
>
> "(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.
>
> "(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the Seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation."

Accordingly, since "the cost of providing [the] services and facilities and the appropriate charges therefor have [thus] equitably been determined after a careful analysis and apportionment of the burdens and responsibilities of each party" (R. I 365), the Commission refused to adopt either the $3.08 standby charge proposed by Florida Power or the 50-50 split of benefits recommended by the Examiner. This result, the Commission further indicated, is reinforced by the additional consideration that not only would Florida Power's proposed charge "discourage future coordinated planning and operation" (R. I 365), but Florida Power had failed "to include a comparable charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected." (R. I 367). Thus, it noted that Florida Power "plainly bears the burden of justifying an apparently discriminatory imposition in this one instance" (R. I 367), a burden which it had not carried. However, the Commission commented (R. I 365):

> "If we were to appraise Florida Power's request for an annual standby charge in terms of a 'splitting of the benefits' test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits, and corporate financial savings."[10]

On appeal, the Court of Appeals agreed that the interconnection "is 'necessary or appropriate in the public interest' and the interconnection will not put an 'undue burden * * * upon' the facilities of Florida Power or 'impair its ability to render adequate service to its customers' " (R. II 501). However, the Court held that the terms of the interconnection prescribed by the Commission "do not adequately satisfy the statutory requirements [fn. omitted] because they do not provide Florida Power with the 'reimbursement reasonably due' it" (R. II 501). In this regard, the Court

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[10]The Commission's opinions elaborated upon these benefits (R. I 366-368, 411-412) as discussed *infra*, pp. 31-37.

accepted Florida Power's contention "that the Commission's policy of looking to the proportionate burdens that each system places upon the interconnected system networks instead of the benefits received as a result of the particular interconnection is inconsistent with the statutory authority to compel the interconnection" (R. II 489-490) and further held (R. II 503):

> "The Commission's policy of proportionate utility responsibility really works only one way. The small system received high benefits and, because of its size, no real obligations. The large system, however, receives no benefits but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation."

Accordingly, the Court declined to "enforce" this portion of the Commission order and remanded the case to the Commission to provide "reasonable compensation" (R. II 503).

SUMMARY OF ARGUMENT

In declining to enforce the Commission's determination of the "compensation * * * reasonably due" Florida Power under Section 202(b) on the basis of proportionate utility responsibility, the Fifth Circuit erred in failing to recognize that that determination was primarily for the Commission with the Court's function necessarily limited. The express language of Section 202(b) clearly manifests a Congressional intent to vest responsibility in the Commission to give content to the statutory language and to determine the policy to be applied in formulating the terms of interconnections directed under that Section. Also, any meaningful determination with respect to such policy has its roots in the complex economics and technology of the electric power industry, as to which the Commission is expert and the courts are not.

The Court of Appeals' error is compounded by the fact that the views which it thus rejected in substitution for those

of the Commission conflict with established principles and operate to frustrate the Act's purposes. In contrast to the ruling below that Section 202(b) requires an allowance for benefits bestowed, it is settled that the Federal Power Act leaves the Commission free to select its own method of determining rates and further that to the extent that that Act contains any preference, it would be in favor of cost to the exclusion of value and other non-cost considerations. Moreover, unlike the approach of the Fifth Circuit, the Commission's approach is in accord with the Act's objective of "assuring an abundant supply of electric energy * * * with the greatest possible economy" (Section 202(a), App., *infra*, p. 39). It does not penalize a utility for being the last one to join an interconnected network; here, the last to join the Florida power pool.[11] It facilitates, rather than creates obstacles to, the expansion of the interconnections and coordination needed, particularly by small electric systems, in order to reduce costs and to enhance reliability at this time of developing shortages in electric capability and concomitant increasing threats of "brownouts" and "blackouts."

Further, the Court of Appeals' assertion that the Commission's policy of proportionate utility responsibility "really works only one way" ignores both the actualities of the electric power industry and the Commission's express findings, which, being supported by substantial evidence, are conclusive. Contrary to the claim of the Court below that the Commission's policy subjects only the large utilities to "real substantial responsibilities," the burdens imposed under the Commission's order are primarily upon Gainesville. All the costs of accomplishing the interconnection are to be borne by Gainesville and none by Florida Power. The Com-

[11] Although not formally entitled a "power pool," the interconnected electric operations of 5 major Florida utilities, coordinated by the Florida Operating Committee, can in fact be considered an operating power pool, and is so referred to hereafter. See pages 4-5, *supra*.

mission's order does not require the providing of any firm service or services by Florida Power; it does not impose any reserve obligations upon Florida Power although it does require Gainesville to maintain or obtain certain minimum reserves required by the criteria and needs of the Florida power pool; and it provides a schedule of rates covering the various services across the connection.

The only charge here at issue is one sought by Florida Power and ordered by the Court solely for the fact of interconnection—irrespective of actual services performed. Such a charge is unjustified and unique for the service which the Commission directed Florida Power is in fact to provide. The mutual emergency service as provided by the Commission and as sought by Gainesville is not firm service and is to be provided only on a when, as, and if available basis, just as it is provided among the other participants in the Florida pool. Such non-firm service is wholly adequate to Gainesville's needs.

The Fifth Circuit's further assertion that large systems do not receive any benefits under the Commission's policy is likewise inaccurate, both as it relates to the electric power industry generally and as it pertains to the Florida Power-Gainesville situation specifically. The evidence of record amply supports the Commission's express findings that the interconnection will make available to Florida Power as well as to Gainesville "substantial and important * * * electrical operating benefits and corporate financial savings" (R. I 365).

ARGUMENT

As part of its order directing Florida Power to interconnect with the facilities of Gainesville in this case, the Commission determined that since Florida Power was not bearing any part of the costs of the interconnection and was to be paid for services rendered, Section 202(b)'s requirement of "compensation * * * reasonably due" would be satisfied by requiring Gainesville to bear its fair share of responsibilities

and burdens of the interconnected systems in accordance with Florida pool criteria and needs. By applying this policy of proportionate utility responsibilities under which the responsibilities of interconnected operation are shared on the basis of "the proportionate burden each system places upon the interconnected system networks, not the benefits each expects to receive" (R. I 364-365), the Commission avoided the imposition of "economic penalties [upon Gainesville] for being the last one on the interconnected network" (R. I 358).

In declining to enforce this portion of the Commission's order for failure to provide compensation for benefits bestowed as well as reimbursement for costs incurred, the Court below committed multiple error. It erred in failing to defer to the Commission on matters which fall primarily within the responsibility of the Commission by virtue of Congressional direction and Commission expertise. It erred in insisting upon the inclusion of compensation for benefits bestowed as part of the "compensation * * * reasonably due" under Section 202(b). And it erred in undertaking to make findings of fact with respect to the burdens and benefits resulting to Florida Power from the interconnection independently of, and contrary to, those which the Commission made on these very matters with ample support in the record.

I.

THE COMMISSION'S POLICY OF PROPORTIONATE UTILITY RESPONSIBILITY DOES NOT EXCEED ITS DISCRETION

A. The Determination of "Compensation * * * Reasonably Due" Within Section 202(b) Is Primarily for the Commission.

Section 202(b) expressly provides that as part of an order directing a public utility to interconnect its transmission facilities with the facilities of others–

> "The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

This language, we submit, clearly manifests the Congressional intent to vest *in the Commission* the primary responsibility for determining the policy to be followed in formulating the terms of the interconnection as well as the terms themselves. This is particularly so since, as shown below, any meaningful decision as to the construction to be given this language and the appropriate policy to be followed thereunder has its roots in the complex economics and technology of interconnected electric power operations and it is the Commission, not the Courts, which is the expert in these matters by virtue of day-by-day exposure and experience.

In these circumstances, the Commission's discretion is very broad and judicial function in reviewing such Commission determination is limited. It is well settled that an administrative agency has great leeway—to be disturbed on judicial review only rarely—in construing statutory terms in laws the administration of which has been delegated to it by Congress. See, *e.g.*, *SEC v. New England Electric System*, 390 U.S. 207, 211 (1968); *SEC v. New England Electric System*, 384 U.S. 176, 185 (1966); *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Unemployment Comp. Commission v. Aragon*, 329 U.S. 143, 153 (1946); *NLRB v. Hearst Publications Inc.*, 322 U.S. 111 (1944). As this Court stated in affirming the NLRB's determination that the newsboys there involved were "employees" within the Labor Relations Act in the *Hearst* case (322 US at 130-131):

> "* * * Everyday experience in the administration of the statute gives it familiarity with the circumstances and backgrounds of employment relationships in various industries * * * The experience thus acquired must be brought frequently to bear on the question who is an employee under the Act. Resolving that question, like determining whether unfair labor prac-

> tices have been committed, 'belongs to the usual administrative routine' of the Board [fn. and citations omitted].
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> * * * * *
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> "* * * where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Worker's Act [fn. omitted] that a man is not a 'member of a crew' (South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251) or that he was injured 'in the course of his employment' (Parker v. Motor Boat Sales, Inc., 314 U.S. 244) and the Federal Communications Commission's determination [fn. omitted] that one company is under the 'control' of another (Rochester Telephone Corp. v. United States, 307 U.S. 125), the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

Similarly where the matter relates to a question of appropriate policy to be followed in administering a regulatory statute, agency discretion again is given broad leeway and accordingly, judicial review is necessarily limited. For example, as this Court stated in *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943) in rejecting an attack upon the FCC's Chain Broadcasting Regulations (*Id.* at 224):

> "The Regulations are assailed as 'arbitrary and capricious'. If this contention means that the Regulations are unwise, that they are not likely to succeed in accomplishing what the Commission intended, we can say only that the appellants have selected the wrong forum for such a plea. What was said in Board of Trade v. United States, 314 U.S. 534, 548, is relevant here: 'We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission.'

> Our duty is at an end when we find that the action of the Commission was based upon findings supported by evidence, and was made pursuant to authority granted by Congress. It is not for us to say that the 'public interest' will be furthered or retarded by the Chain Broadcasting Regulations. The responsibility belongs to the Congress for the grant of valid legislative authority and to the Commission for its exercise."

And in the *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968) involving the validity of rates fixed by the FPC for gas produced by independent producers from the Permian Basin, this Court's decision was again guided by deference to the agency's delegated responsibility and expertise (*Id.* at 767):

> "* * * we have heretofore emphasized that Congress has entrusted the regulation of the natural gas industry to the informed judgment of the Commission, and not to the preferences of reviewing courts. A presumption of validity therefore attaches to each exercise of the Commission's expertise, and those who would overturn the Commission's judgment undertake 'the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.' FPC v. Hope Natural Gas Co. [320 U.S. 591 at 602]. * * *
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> "* * * No other rule would be consonant with the broad responsibilities given to the Commission by Congress; it must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests."[12]

As we will now show, the Court below exceeded permissible limits and invaded an area delegated to the Commission when it injected its own views in preference to the Commis-

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[12]See also *SEC v. Chenery Corp.*, 332 U.S. 194, 207, 209 (1947); *SEC v. Central–Illinois Securities Corp.*, 338 U.S. 96, 127 (1949).

sion's policy of proportionate utility responsibility for determining the proper measure of compensation due under Section 202(b).

B. The Commission's Policy Accords With and Furthers The Act's Purposes and Objectives

By setting aside the Commission's order for failure to include in the "compensation, * * * reasonably due" under Section 202(b) an allowance for benefits bestowed as well as reimbursement for costs incurred, the Court below has in effect ruled that Section 202(b) contains a *mandate* requiring that the compensation provided include an allowance for those benefits. Such a result clearly conflicts with long-established principles and operates to frustrate the Act's objectives and purposes.

It has been established at least since 1944 when the Court issued its decision in *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) that (1) the Federal Power Act and its companion, the Natural Gas Act, do not prescribe any specific method for determining just and reasonable rates thereunder and that (2) the Commission may properly ignore value and other non-cost considerations in determining such rates (*Id.* at 601):

> "* * * Rate-making is indeed but one species of price fixing. * * * The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid. * * * It does, however, indicate that 'fair value' is the end product of the process of rate-making not the starting point as the Circuit Court of Appeals held. * * *"

See, also *Permian Basin Area Rate Cases, supra*, at pp. 792-795.

Indeed, there has evolved with the passage of time what might be described in effect to be a presumption favoring the use of cost to the exclusion of value or other non-cost considerations. Thus in *City of Detroit, Michigan v. FPC*, 230

F.2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956) where the Commission undertook to abandon cost completely in favor of value (i.e., field price) as a measure for fixing rates for pipeline produced gas, the Court of Appeals set the Commission's order aside, ruling (*Id.* at 818-819):

> "* * * though we hold [the conventional rate base] method not to be the only one available under the statute, it is essential in such a case as this that it be used as a basis of comparison. It has been repeatedly used by the Commission, and repeatedly approved by the courts, as a means of arriving at lawful–'just and reasonable'–rates under the Act. Unless it is continued to be used at least as a point of departure, the whole experience under the Act is discarded and no anchor, as it were, is available by which to hold the terms 'just and reasonable' to some recognizable meaning."

Plainly, therefore, there is *no* mandate requiring the use of value or benefits, as distinct from costs, in determining "compensation * * * reasonably due" under Section 202(b). To the contrary, not only is there no mandate either way, but established principles manifest a preference for the Commission's use of cost as against the benefits or value concepts which the Court below would reject. Under the principles discussed earlier, this should be the end of the matter. As this Court stated in *Udall v. Tallman*, *supra*, quoting from *Aragon*, *supra* (380 U.S. at 16):

> "'To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.'"[12a]

Further undermining the holding below is the fact that the Commission's approach–rather than that of the Court below–accords with, and furthers, the Act's purpose and objectives. In the first place, Section 202(a) of the Act imposes upon the Commission the responsibility "* * * of assuring an abundant supply of electric energy throughout

[12a] See also, *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1 (1968).

the United States *with the greatest possible economy* and with regard to the proper utilization and conservation of natural resources * * *." (See App., *infra*, p. 39.) Patently, including allowance for benefits bestowed in addition to reimbursement for costs incurred in the "compensation * * * reasonably due" under Section 202(b) means that the rates of the paying utility for the power sold by it would be higher than they otherwise would have to be if the compensation required to be paid did not include an extra allowance for benefits. On the other hand, of course, the utility supplying the power is not hurt by the exclusion of that allowance because the inclusion in "compensation * * * reasonably due" of all costs incurred operates to keep such supplier whole.

In the second place, the Commission's policy operates so that each participant in an interconnected operation bears its proportionate share of the operating responsibilities of the interconnected network with the result that there is no penalty for being the last one on the interconnected network. In contrast, the approach of the Court below of ignoring concepts of proportionate responsibilities would exact from the last to join a proportionally greater contribution than that required from those already participating in the interconnected system. To permit such an imposition merely because one is the last to join is unfair, unwarranted and contrary to the Act's purpose of encouraging interconnection. Gainesville should be able to join the Florida pool on the same basis as the five current members, by bearing no more than its proportionate responsibility for operating reserves under the uniform formula set by the Operating Committee.

Finally, the allowance of an additional amount for benefits bestowed, as the Court below would require, would obviously create obstacles to meaningful interconnections and coordination, particularly between small systems and large systems, which would not exist under the Commission's approach. As the Commission pointed out (R. I 365):

> "* * * the specific type of demand charge requested by Florida Power, namely, the imposition of a charge based upon the size of Gainesville's largest generating unit, would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units. Without such a demand charge, Gainesville could participate more fully in coordinated planning including staggered construction with Florida Power and other systems in Florida to the mutual benefit of all such systems."[13]

The requirement by the Court below would thus have a deterrent effect upon the Commission's efforts to foster expanded interconnection and coordination as a means of reducing the cost, and enhancing the reliability, of electric service.

The sanctioning of such a deterrent is especially to be avoided at this time because of the developing shortages in electric capacity and the concomitant increasing threat of "brownouts" and "blackouts." It is also to be avoided because it is becoming increasingly difficult and uneconomic for the smaller systems to continue to operate in isolation, and interconnection and coordination with other systems are virtually mandatory to assure their continued existence as viable entities.

According to the Commission's National Power Survey (1964), p. 267, *et seq.*, not only are there literally hundreds of relatively small systems operating in isolation without any interconnection with any other system, but even where the small systems are interconnected with other and larger systems, the relationships between the two systems are fre-

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[13]This is so because imposing a substantial charge measured by the size of the largest unit tends to discourage the construction of larger, more efficient units—a major purpose of interconnection and coordination (R. II 432).

quently very limited, and there is an absence of the cooperation necessary to achieve the benefits of full coordination. In addition, it is repeatedly noted throughout the Survey (particularly, p. 170, *et seq.*) that interconnection *and* full coordination are highly desirable and to be fostered at all levels and at every opportunity since they open the way for many and valuable benefits, not the least of which arise from reduced overall generating requirements and lower unit costs achievable through the planning and construction of new facilities. As the Commission stated in *Crisp County Power Commission v. Georgia Power Co.*, 42 F.P.C. 1183, 1187 (1966):

> "* * * The electric power industry is continuing its historic trend toward larger units in order to attain the economies inherent in large-scale production of energy. The industry also has accelerated the pace of its attempts to coordinate and to reduce reserve capacity in order to utilize more efficiently its capital investment and improve bulk power supply reliability. In this context, the disadvantages of small isolated systems which generate all of their own energy and rely upon their own limited resources, have become more evident and more critical with regard to the cost and reliability of service. The ever-widening gap that technology has created between large interconnected systems and isolated systems, in the economical use of capital and the efficient production of energy, threatens the survival of many small systems. Unless isolated systems can enter into coordination agreements with their larger interconnected neighbors, their outlook appears bleak, indeed."

In this regard, it should be pointed out that the foregoing is not intended to suggest that consideration of benefits is never relevant. To the contrary, we fully recognize that consideration of benefits is critical to the determination whether to require interconnection. Cf. R. I 358, *et seq.* But that is different from the problem presented in this case. The statutory standard for ordering interconnection

under Section 202(b) is whether "such action is necessary or appropriate in the public interest" (see App., *infra*, p. 39); obviously the existence and magnitude of the net benefits resulting from the interconnection are highly relevant under that standard. On the other hand, the provisions as to the payments to be made once the interconnection is ordered are governed by the entirely different language of Section 202(b) relating to the compensation set out *supra*, p. 15.

II. THE DECISION BELOW RELIES ON ASSERTIONS WHICH ARE INCONSISTENT WITH THE FINDINGS MADE BY THE COMMISSION AND SUPPORTED BY SUBSTANTIAL EVIDENCE

In further support of its rejection of the Commission's policy of proportionate utility responsibility, the Court below asserts that that policy

> "* * * really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation." (R. II 503).

Such assertions not only consist of *a priori* pronouncements without any relation to the actualities of the generation and distribution of electric power and energy generally;[14] they are contrary to the express findings of the Commission, which, as we show below, are fully supported by substantial evidence in the record. These assertions, therefore, violate the settled principle exemplified by the provision in Section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b), that "[t]he findings of the Commission as to fact, if supported by substantial evidence, shall be conclusive."

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[14] Regardless of the disparity in the sizes of the two utilities, the intersystem benefits and burdens are limited by the capacity of the facilities interconnecting the two systems.

A. The Commission's Order Does Not Subject Florida Power to Any Real or Uncompensated Burdens

In connection with its claim that the Commission's policy subjects only the large utilities such as Florida Power to "real substantial responsibilities," the Fifth Circuit states that (R. II 502):

> "* * * although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection."

There is no basis or justification in the record in this proceeding for such a claim of an "added obligation." To the contrary, the obligations imposed by the Commission's order are entirely upon Gainesville, and the net effect of the order is to *relieve* Florida Power of obligations to which it otherwise would be subject under the rules of the Florida power pool.

To begin with, it is clear on the face of the Commission's order—and Florida Power does not contend to the contrary—that *all* the costs of accomplishing the interconnection are to be borne by Gainesville and *none* of these costs are to be paid by Florida Power (R. I 361, 368). The Commission's order is also clear that it does not require Florida Power to provide any firm service or services (R. I 363, fn. 4). Thus, although the interconnection would be available as a means of providing a variety of services (R. I 358-359), the Commission has not imposed *any* firm obligation upon Florida Power with respect to the providing of any of these services; therefore, it imposes no "added obligation." Rather, the Commission expressly made it clear that the extent to which the interconnection would be used was a matter for decision by the parties (R. I 359).

Moreover, in line with its recognition that "appropriate compensation [may be] afforded either through service exchanges or financial payments" (R. I 358), the Commis-

sion prescribes substantial obligations or "costs" for Gainesville. Thus, as noted, *supra*, p. 8 the Commission's order imposes an installed reserve obligation upon Gainesville requiring it to own or provide generating capacity resources equal to or greater than 115 percent of its estimated annual peak-hour demand (R. I 360, 376). Similarly, Paragraph 7(c) imposes an operating reserve obligation on Gainesville up to a limit of 15 percent of its estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves in accordance with Florida pool criteria (R. I 360-361, 377).

Not only does the Commission's order not impose any new installed reserve obligation upon Florida Power, but the requirements imposed upon Gainesville redound to the advantage of Florida Power. All of Gainesville's installed generating resources become integral components of Florida Power's resources insofar as Florida Power's relations with its interconnecting utilities are concerned, and therefore Gainesville's installed reserve capacity becomes an additional resource to Florida Power without cost. The effect of the requirements of Paragraphs 7(a) and 7(c) of the Commission order is that the reserves required of and supplied by Gainesville also are available as operating reserves of the Florida pool and Florida Power *without* cost to Florida Power and *without* imposing any additional generating reserve obligation on Florida Power. See also *infra*, pp. 32-35. In either case, the reserves which Florida Power must provide to conform to pool requirements (and thus at its own expense) are in fact reduced by the tie-in of Gainesville's reserves.

Finally, the Commission's order expressly provides a schedule of rates compensating Florida Power for every service which Florida Power may be called upon to provide across the interconnection. As recognized by Florida Power in its Initial Brief before the Fifth Circuit (at pp. 19-20):

> "The Commission prescribed compensation for every conceivable service across the connection except emergency backup service."

Even with respect to the latter, Florida Power is to be paid for all the emergency electricity provided by it to Gainesville. Indeed the Commission-prescribed schedule of payments requires Gainesville to pay, in addition to an energy charge, a demand charge of $.05 per kw per day if emergency service is provided for more than 60 minutes (R. I 377-378).

Despite this detailed and comprehensive schedule of rates, Florida Power contends that the Commission erred in failing to include a standby charge for the cost of facilities which it assertedly will have to keep available at all times to provide such emergency service. Florida Power contends (Br. in Opp. p. 10) that the emergency service required under the Commission's order imposes upon it the obligations of:

> "* * * furnishing of capacity in a state of readiness capable of supplying instantaneously at any instant of the day or night the energy required to protect against loss of a system's largest generator. Emergency backup service is the fire department. It is the equipment installed and in a continuous state of readiness to meet any generating deficiency. Gainesville wants to rely at all times upon Florida Power's backbone transmission network for emergency backup service whether or not energy is being transferred. Emergency energy is the 'water' used to put out the 'fire.' The Commission ordered Gainesville to pay for the 'water' but relieved Gainesville from all responsibility to contribute to the cost of the fire department."[15]

The first difficulty under this argument is that adoption of Florida Power's proposed charge would be unique for

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[15]The fire department analogy is plainly inapplicable as is shown in the text. Moreover, it should be noted that Florida Power's backbone transmission network—part of "the fire department"—serves the same function for Florida Power when Gainesville is called upon to deliver emergency service into Florida Power's system. And Gainesville bears the entire cost of transmission on its side of the interconnection necessary to deliver electricity on either side thereof.

the service which Florida Power is to provide under the Commission's order. The industry operates on the general principle that each party to an interconnection will maintain an adequate level of installed reserve capacity and therefore will be entitled to "emergency assistance" from the other party without being subject to a standby charge. Such, indeed is the situation of the Florida pool, of which Florida Power is a member. As indicated by the Commission (R. I 367), no such charge is made against any members of the Florida pool by any other member (see Exhibits 74, 80, 86, 90, 91, 92, 93).

The decision below refers to "instantaneous" emergency service, a concept that Florida Power emphasizes in its brief. A properly operating pool, within the limits of the connected spinning reserves, responds automatically and almost instantaneously to changes in loads or generating capacity anywhere on the interconnected system. Thus such "instantaneous" response to emergencies is normal between Florida pool members, and will be extended to the Gainesville-Florida Power tie. It is the pool, with its apportionment of spinning reserve obligations to each member, large or small, that assures within limits "instantaneous" emergency service between its members. The Commission's order contemplates no more "instantaneous" emergency service for Gainesville than would be available in similar circumstances to other members of the pool.

The second and more important difficulty with this argument of Florida Power is that it grossly overstates the nature of the obligation which the Commission imposed, and which Gainesville sought, with regard to emergency backup service. As pointed out *supra*, p. 24, the Commission in its order took pains specifically to emphasize that its order imposes no obligation upon Florida Power "to provide any specific *firm* power service" to Gainesville (R. I 363, fn. 4). Since the Commission's disavowal applies to emergency backup service as well as any other service which Florida Power might provide under the Commission's order, Florida Power's obligation to provide emergency service to Gainesville is only on a when, as, and if available basis. In other words,

the Commission's order requires neither "the furnishing of capacity in the state of readiness capable of supply instantaneously at any instant of the day and night the energy required to protect against loss of [Gainesville's] largest generator" nor the maintenance of equipment "in a continuous state of readiness to meet any generating deficiency" (Br. in Opp., p. 10).

The Commission's requiring of emergency backup service only on an "as available" basis accords entirely with Gainesville's request repeatedly made plain in the record. Thus, Gainesville's witness Benson said of Gainesville's proposed contract that (Exhibit 4, Schedule 5, page 3):

> "* * * Gainesville will expect from and rely upon Florida Power to furnish, during any period of emergency on the system of the City, any power supply capabilities then available to Florida Power *in excess of its requirements for its own load and any firm capacity obligations to others.*" (Emphasis supplied)

Similarly, in explaining his disagreement with the $3.08 standby charge sought by Florida Power, Mr. Benson reiterated that (R. II 466):

> "For one thing, it [Florida Power's proposed charge] is based upon a reservation of transmission capacity, but *Gainesville is not seeking a firm service obligation.* Therefore, *no capacity reservation is required.*" (Empahsis supplied)

And again, in response to the specific query of Florida Power's counsel on cross-examination (R. II 472):

> "* * * will not this connection impose upon Florida Power the burden, obligation, or whatever you want to call it, of providing emergency backup service to Gainesville in the amount of its largest unit at all times."

Mr. Benson answered (*Ibid.*):

> "A. No, sir. *The provision for emergency service does not impose a firm service obligation on the part of Florida Power Corporation* or upon Gainesville. It is upon an implicit basis of there being *no reservation of capacity,* of there being *no investment*

incurred by Florida Power Corporation for the interconnection." [16] (Emphasis supplied)

In this regard it should be noted that the obligation of the members of the Florida pool to provide emergency service to the other pool members is similarly on such a when, as and if basis. Yet, despite this limitation, the pool concept operates successfully to provide a coinsurance against generator outages for its members. Each member of the Florida pool, from Florida Power & Light Company, the largest,[17] to the City of Orlando, the smallest,[18] provides its share of the insurance capacity in accordance with a formula which takes into account the burden placed upon the pool by each member and fixes the total reserve required and the proportionate share of each on that basis. And the reserves thus prescribed, together with any other capacity available at the moment—without any additional firm obligation vis-a-vis emergency service—provide the requisite protection against outages on the systems of each of the participating companies.[19]

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[16]This absence of any firm obligation upon Florida Power to provide emergency service to Gainesville distinguishes the present situation from those referred to by Florida Power at pages 14-16 of its Brief in Opposition. In each of the situations cited by Florida Power including those involving the Southeastern Power Administration there was a firm obligation to provide emergency service (see, e.g., *United States Department of the Interior, Southeastern Power Administration*, 39 F.P.C. 992 (1968); accordingly, a standby demand charge was not only appropriate, but required under standard rate-making principles.

In this regard, there should be noted the Commission's requirement that Gainesville pay, in addition to an energy charge, a demand charge of $.05 per kw per day if emergency service is provided for more than 60 minutes (R. I 377-378). On a monthly basis, this would amount to $1.50 per kw.

[17]Total capacity 3648 mw, largest unit 432 mw, peak load, 2529 mw.

[18]Total capacity 319 mw, largest unit 213 mw, peak load 180 mw. 1965 Data: from Exhibits 78 and 96, sheet 5.

[19]See Florida Operating Committee Minutes, Exhibit No. N-132, and pages 4-5, *supra*.

Plainly, therefore, not only is the providing of emergency service by Florida Power to Gainesville on a comparable when, as and if basis, likewise adequate for Gainesville, but the Commission's prescription of reserves for Gainesville in conformance with the rules of the Florida pool constitutes a more than sufficient *quid pro quo* for Florida Power. See *infra*, pp. 32-35.

In any case, Gainesville will need emergency service only in the remote contingency of outage of generating capacity at a time when the customer load exceeds remaining operating capacity. In Gainesville's case, the chances of this occurring are extremely small; industry statistics show that units such as those of Gainesville have extremely low forced outage rates (R. I 220; Exhibit 73, Sheet 3). Indeed, Gainesville itself has in fact experienced virtually no forced outages for the 1956-1965 period (Exhibit 73, Sheet 1).[20] The combined probability that Gainesville will require emergency assistance at a time when the Florida pool does not in fact have available reserve capacity, is so minute as to be regarded as *de minimis* for design purposes.

Finally, Florida Power's argument ignores the fact the emergency service is mutual, so that Gainesville stands by to provide emergency assistance up to the 60 mw of interconnecting capacity to assist Florida Power in any system, particularly disturbances affecting its system in the Gainesville vicinity. This is discussed in the following section which deals with the benefits the Commission recognized as flowing to

[20] As shown on Sheet 2 of Exhibit 73, 3 of Gainesville's then 5 units suffered no forced outages during the period covered; of the other two, one, Unit 6 with a 16,500 kw capacity, suffered a 30-minute forced outage in 1959 due to gas pipeline company failure and the other, Unit 7 with a 24,500 kw capacity, suffered two 15-minute outages in 1964, one due to relay failure and the other due to forced draft fan starter failure. This is confirmed by the Staff's loss of load studies which show that the probability of load exceeding available generation on the Gainesville system (R. II 453-454, 461, Exhibit 98) is only 0.000043—about .37 hours, or 23 minutes, per year.

Florida Power. In any event, Gainesville will be subject to the same, if not greater, burdens as Florida Power, whatever they may be, and in addition Gainesville furnished the interconnection facilities at no cost to Florida Power.

B. The Commission's Finding that Florida Power Could Benefit Substantially from the Interconnection Is Supported by Substantial Evidence.

Likewise without substance or basis is the assertion of the Court below that under the Commission's policy of proportionate responsibility, the large system does not receive any benefits.

To begin with, this assertion is inaccurate as it relates to the electric power industry generally. Most large systems, such as Florida Power, obviously do not consist entirely of units with capacities of 875 mw or even 500 mw, all in close proximity to the company's markets. To the contrary, large systems typically have many small units and their markets are spread over a wide geographical area. Plainly, a large system in such circumstances may well benefit substantially from interconnection with a smaller system, which can be helpful in a variety of ways to the larger system. As the Commission noted in the comparable situation of a small system seeking interconnection with a large system involved in *Crisp County Power, supra,* 42 F.P.C. at 1188:

> "* * * there will often be situations where the smaller system can bring to the coordinated interconnection additional capacity and energy resources at costs significantly lower than would otherwise be available, as well as adding to the reliability of the larger system."[21]

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[21] See also R. II 49 discussing how participation in a power pool has been beneficial both to Orange and Rockland Utilities, Inc., with a 1965 annual peak of 255.3 mw and to Consolidated Edison Company of New York, with a 1965 annual peak of 5,710 mw, nearly 25 times that of Orange and Rockland. See also R. I 89; Exhibit 99.

The Court's assertion is also inaccurate as it pertains to the Florida Power-Gainesville situation here before this Court. Indeed, the Commission specifically found, on the basis of substantial evidence in the record, that the interconnection will afford Florida Power, as well as Gainesville "substantial and important benefits: electrical operating benefits and corporate financial savings" (R. I 365).[22]

(a) *Electrical Operating Benefits*

Turning first to the electric operating benefits which the interconnection would make available to Florida Power, the record shows that the interconnection will provide an additional energy source and thereby improve the reliability of service furnished by Florida Power in the Gainesville area where Florida Power has over a thousand customers but no generating plant of its own. As a matter of fact, Gainesville is the large system and Florida Power the small one within the Alachua County area. Thus, Gainesville's power plant is only 15 miles from Florida Power's Archer Substation and hence would be less exposed to lightning, storm or outage for other reasons than the energy sources

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[22] The attempt of the Court below to brush aside the Commission's findings of benefits as tentative only and hence as not "protected by the umbrella of the substantial evidence test" (R. II 502, fn. 20) misreads the Commission's opinions. The only thing tentative about these findings was not the findings, but their relevance in light of the Commission's policy relative to the determination of compensation (see R. I 365). As to the Commission's findings themselves, they are both firm and specific, as is readily apparent from the Commission's opinions (R. I 365-368, 411-412).

In this regard it should be noted that this ground was not raised in Florida Power's application for rehearing (R. I 381-408). The ruling of the Court below, accordingly, violates the principle prohibiting a court, upon review of an agency decision, from considering grounds not raised on rehearing. Section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b); *Panhandle Eastern Pipe Line v. FPC*, 324 U.S. 635, 649 (1945); *FPC v. Colorado Interstate Gas Co.*, 348 U.S. 492, 498 (1955).

used by Florida Power to serve that area. This is particularly so since Florida Power's closest generating source is 75 transmission miles away; its next closest is 80 transmission miles away; and of the three energy sources connected to its load in the Gainesville area, two serve other loads and could be vulnerable to outage (R. I 366, 414; see also R. I 221-222).

Still another such benefit stems from the facts that (1) 16 of Florida Power's 24 generating units have a capacity less than 50 mw (Exhibit 31) and (2) these 16 units include "a small hydro plant of 8 mw; 7 old inefficient low pressure units with a combined maximum dependable output of 88 mw on cold standby used only to meet short-term winter peaks, with two units having a combined capacity of 65 mw to be added to cold standby by 1970 or 1971" (R. I 315).[23] Consequently, Gainesville's ability, with its quick starting, highly reliable generating units (R. I 35-38),[24] to deliver the full 60 mw of interconnecting capacity to Florida Power during most of the year obviously will improve Florida Power's ability to meet its peak obligations.[25]

In addition to improved reliability in these specific areas, the record shows that interconnection with Gainesville would operate to improve the reliability of Florida Power's system generally (R. I 366). Thus, the studies of Commission wit-

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[23]Certain units in "cold standby" require some 8 to 12 hours before they are capable of generating power (Exhibit 31).

[24]83% of Gainesville's plant is 8 years old or less and one unit is over 20 years old, whereas only 50% of Florida Power's steam capacity is in units 8 years old or less and 8.7% is over 20 years old (R. I 220). Moreover, Gainesville subsequently installed three gas turbines with self-contained starting systems independent of external power which could provide valuable assistance to Florida Power and through it, to the Florida pool, in the event of a wide-spread power failure, such as that which occurred in the Northeast in 1965 (R. I 220).

[25]In addition, each system will be able to draw on the other's reserve capacity at any time of the year. In this regard, it should be noted that irrespective of the relative size of the two systems, the 60 mw capacity of the interconnection provides a ceiling upon the assistance each party can be to the other.

ness Savage show that without Gainesville and giving full effect to Florida Power's contractual arrangements for additional power supply,[26] the loss of Florida Power's largest unit at the time of its monthly peak demand would cause demand to exceed capacity on 19 occasions in the period 1967-1969; whereas the addition of Gainesville would reduce the number of prospective capacity deficiencies due to the loss of that largest unit to 12 (R. I 210-211; Exhibit 72).[27]

That the reliability of Gainesville's generating units is greater than those of Florida Power is further reaffirmed by loss of load studies submitted by Commission witness Braitman. These studies showed that the probability of load exceeding available generation on Florida Power's system (including its firm 200 mw purchase from Tampa) through forced outages is .0050 compared to a similar figure of 0.000043 for Gainesville (R. II 439, 461).[28] The inter-

[26]Florida Power had two contracts for outside power supply: one with Tampa Electric Company (Tampa) for 200 mw of capacity out of Tampa's steam-electric generating unit No. 6 (Exhibit 74), and the other with Southern Services, Inc., providing generally for seasonal exchange of 100 mw of capacity. The latter, however, was scheduled to be terminated as of September 15, 1969 (R. I 172). Subsequent to the close of the record, Tampa's Unit No. 6 was taken out of service as a result of a fire, with the consequent loss to Florida Power of the 200 mw capacity.

[27]Exhibit 70 shows that the generating facilities owned by Florida Power *alone* would be inadequate to serve the predicted loads from January 1967 through December 1969. As shown in that exhibit, if the largest unit on the Florida Power system were taken out of service during the time of peak monthly demand, Florida Power's remaining generating capability would be insufficient to meet customer requirements in 30 of the 36 months covered in that exhibit. This is due, in large part, to the fact that, as a member of the Florida Power pool, Florida Power is relieved of the need to have installed ready or spinning reserve capacity equivalent to the capacity of its largest unit. The capacity of Florida Power's ready reserve is about 55% that of its largest unit (R. I 214).

[28]Expressed in terms of hours (8760) per year, the studies show a probability that Florida Power's load would exceed available generation 43.8 hours (0.0050 times 8760) per year or about 120 times the .37 hours per year for Gainesville.

connection with Gainesville would improve Florida Power's reliability by reducing its loss of load probability to 0.0029 or to about 25 hours per year (R. II 438-439, 453-455, Exhibit 98).

The value of the assistance Gainesville could thus provide is enhanced by the further fact that Gainesville's generating units have a greater reliability than the larger units of Florida Power. Thus, the "forced outage data furnished * * * by Florida Power Corp. and by Gainesville show that the generating units of Gainesville are less susceptible to forced outages than those of Florida Power." (R. I 211; see also Exhibit 73).

(b) *Financial Benefits*

In addition to the electric operating benefits just discussed, the record, as the Commission found (R. I 365-366), shows that the interconnection would make substantial financial benefits available to Florida Power. Indeed, while the extent to which Florida Power in fact obtains these benefits from the interconnection depends on the extent to which Florida Power coordinates its activities with those of Gainesville, Commission witness Braitman summarized the financial benefits made available by the interconnection as follows (R. II 441-442):

> "Financial benefits to Florida Power stem from its ability to reduce capacity purchases from other neighboring systems or postponing generation installation by recognizing the excess capacity on the Gainesville's system that could be made available during emergencies. Economy energy benefits and spinning reserve benefits would be equally split between the parties. An additional benefit to Florida Power could involve a possible reduction in transmission investment in future years to serve its growing loads in the Gainesville area. If the coordination between these two systems is limited to the capacity reserve coordination reflected by Exhibit (NS-12) 81, Gainesville would receive more financial benefits than Florida Power only during the first few years

of the interconnection. If they coordinate their expansion plans, Florida Power benefits would equal or be greater than Gainesville's."

Thus, the evidence shows that the interconnection could serve to eliminate duplication in generating equipment, estimated as initially providing a gross saving in capital costs of $6,400,000 with $2,000,000 thereof going to Florida Power and the remainder going to Gainesville (R. I 61, 66). Also, there would be available substantial benefits and savings from the sale and exchange of economy energy, estimated to aggregate between $30,000 and $200,000 annually by 1969 (R. I 66-73, 87-88, 222).[29] These economy energy savings would, under the Commission's order (R. I 376-377) be split equally between Florida Power and Gainesville.

Further, Florida Power could benefit economically from the diversity between its peaks and those of Gainesville. The record shows that Gainesville's 1969 summer peaks would exceed its winter peaks by approximately 20,000 kw by 1969, when it could be made available on a firm basis to Florida Power at the base of its winter peak, whereas Florida Power could return 20,000 kw in the summer when its requirements have been significantly less than its winter peaks (R. I 61-62, 64-65, Exhibit 4); or Florida Power could pay a reasonable price for this firm winter capacity and save investment costs.

Likewise, there would be available substantial savings resulting from the reduction in ready and spinning reserves (R. I 63-64, 214-218). Thus the record shows savings to the Florida pool, if Gainesville is treated as a member, of

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[29] Economy energy is energy which it is more economical for Company A to purchase from Company B than to generate itself, because Company B's incremental cost for generating that energy is lower than that of Company A's. The economy energy savings discussed in the text is based on a detailed comparison, *inter alia*, of the load duration curves of Gainesville and Florida Power with the incremental costs of their principal generating stations, under various conditions including projected fuel costs (see R. I 66-73).

12,060 to 14,770 kw in ready reserves and 8040 to 9850 kw in spinning reserves, based upon 1967-69 data (R. I 214-215, Exhibit 76). If Gainesville operates as a satellite of Florida Power, and most of Gainesville's excess reserves are made available to Florida Power, this net reserve increase will vary between 46,300 and 74,400 kw for each month durings the period 1967-1969 (R. I 216-218, Exhibit 76; see also R. II 469-472, 487-488). This increase in reserves available to Florida Power could be used either to increase service reliability with respect to the loads already served by Florida Power or to increase the loads served without a commensurate increase in capacity costs and without impairing its present service reliability.

Furthermore, since Gainesville's generating facilities are far greater than its loads, and there is substantial load diversity between Florida Power and Gainesville, Florida Power could, with the interconnection, reduce its capacity purchases from other neighboring systems and postpone generation installation. Thus, an arrangement between Florida Power and Gainesville comparable to that of Florida Power and Orlando would permit Florida Power to postpone the installation of new generating facilities, thereby enabling it to save some $2,800,000 without incurring any purchased power cost (R. I 88-89, II 458). Such arrangement would have enabled Florida Power, in the words of the Commission expert witness Braitman, to

> "to sell capacity from its '72 unit to Gainesville, capacity that admittedly that first year or second year would be excess to their needs, in part, and would get revenue that they would never have. The combination of reductions in purchases from Tampa, sales from capacity that would normally never give them any revenue, and the postponements of a unit, provides an awful lot of dollars, more so than what I see in the benefits to Gainesville." (R. II 458)

CONCLUSION

For the foregoing reasons, this Court should set aside that portion of the judgment of the Court of Appeals which rejects the Commission's determination of the "compensation * * * reasonably due" under Section 202(b) of the Federal Power Act and direct the entry of an order affirming in full the order of the Commission.

Respectfully submitted,

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APPENDIX

Section 202 of the Federal Power Act, 49 Stat. 487, as amended, 16 U.S.C. 824a provides in pertinent part:

> Sec. 202 (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present it's views and recommendations, and shall receive and consider such views and recommendations.
>
> (b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities

with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, PETITIONERS

v.

FLORIDA POWER CORPORATION

No. 469

FEDERAL POWER COMMISSION, PETITIONER

v.

FLORIDA POWER CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (App. 489–503) is reported at 425 F. 2d 1196. The opinions and orders of the Federal Power Commission (App. 352–381, 409–

417) are reported at 40 FPC 1227 and 41 FPC 4. The opinion of the hearing examiner (App. 313–341) is reported at 40 FPC 1248.

JURISDICTION

The judgment of the court of appeals (App. 504) was entered on May 1, 1970, and was modified in a manner not here relevant by order of June 17, 1970.[1] The petition for a writ of certiorari in No. 464 was filed on July 28, 1970. The petition in No. 469 was filed on July 29, 1970.[2] The petitions were granted on October 26, 1970 (App. 505). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 313(b) of the Federal Power Act (16 U.S.C. 825l (b)).

QUESTION PRESENTED

Whether the Federal Power Commission, in ordering the interconnection of two electric power systems, properly conditioned the interconnection upon compensation terms based on the relative burdens that each places on the interconnected network.

STATUTES INVOLVED

Section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b), provides:

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[1] That order granted the Commission's motion to modify the judgment to eliminate the assessment of costs against the Commission.

[2] On August 28, 1970, Florida Power Corporation filed cross-petitions (Nos. 651 and 652) for writs of certiorari which are still pending before the Court.

(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

STATEMENT

The Federal Power Commission, acting pursuant to Section 202(b) of the Federal Power Act, determined that Florida Power Corporation should interconnect its electric system with that of the City of Gainesville on terms similar to those now applicable to voluntary interconnections among other electric

systems. The court below held that the Commission had authority under Section 202(b) to require an interconnection with such a municipally-owned power system but disapproved the method utilized by the Commission in determining the provisions for compensation in its interconnection order.

The City of Gainesville Electric System. The City of Gainesville through the Gainesville Utilities Department operates an electrically isolated power system that serves approximately 17,000 retail customers in a 22-square mile area consisting of the city and adjacent portions of Alachua County, Florida.[3] In 1965, the total generating capacity of the Gainesville system was 108.4 megawatts [4] while the peak load experienced at any one time during the year was 51.1 mw (App. 314, 353–354). At that time, the generating capacity consisted of five steam electric generating units ranging from approximately 5 to 50 mw (App. 229, 314; Ex. 73); two 15 mw gas turbines were scheduled for operation in 1967–1968 (App. 314). The 1965 installed reserve capacity (generating capacity minus annual peak load) of Gainsville's system was 57.3mw or 112% of its annual peak load (App. 354, 411). Thus the city's reserves were sufficient to cover the loss of the city's largest generating unit—the contingency for which isolated electric systems usually plan (App.252).

[3] The operating statistics in this brief unless otherwise indicated reflect 1965 or 1966 electric system operations as developed in the record.

[4] A megawatt (mw) is a unit of electrical power equal to 1,000 kilowatts or 1,000,000 watts.

Under normal operating conditions, Gainesville maintains enough of its generating units in service—never less than two—to provide adequate spinning reserves [5] to meet load variations. The city's remaining units are available for service within two hours (App. 204) to meet any losses of generation in excess of the available spinning reserves. While in such a circumstance there would be a partial interruption of service, service could always be restored within two hours up to the limit of Gainesville's installed capacity.

The Florida Power Corporation System. Florida Power, a utility subject to the jurisdiction of the Commission under Section 201 of the Federal Power Act, operates an electric system with substantial generation, transmission and distribution facilities serving approximately 370,000 customers in the west, northwest and central sections of Florida covering approximately 20,600 square miles (App. 354). In 1966, Florida Power's plants had an aggregate generating capability of 1595 mw and maximum load requirement of 1232 mw. A 525 mw unit was scheduled for service in December 1969 and a nuclear fueled 875 mw unit for 1972. Florida Power anticipated a peak load of 1826 mw in 1970 (App. 354). Florida Power has been making retail sales in the Gainesville area since 1927 (App. 112, 317).

[5] Spinning reserves are provided by generating units operating at less than capacity. Such units can be called upon to the limit of their capacities to meet immediately an increase in load or a loss of another generating unit. Installed capacity, on the other hand, refers to the generating capacity of units whether or not in operation.

The Florida Operating Committee. Through some ten interconnections, Florida Power operates in parallel with four other Florida utilities—the Florida Power and Light Company, the Tampa Electric Company and the two municipal systems of Jacksonville and Orlando (App. 316–317). All five utilities constitute the membership of the Florida Operating Committee, originally established in 1959 and expanded to include Jacksonville and Orlando in January 1966 (App. 154–155). While the Committee is informal in nature with no authority to commit its members to any specific course of action, it undertakes planning studies and serves as a medium through which the technical operations of its members are coordinated (App. 154–155; 316–317). Through such coordination, the operating reserve[6] needs of the five utility systems are determined and each member voluntarily agrees to maintain a designated portion of such needs (App. 164). There is no contractual assurance that operating reserves from the other systems will be available when needed.[7] Furthermore, each utility has the responsibility for determining its own installed reserve needs. As a result of the sharing of reserves, each member utility carries considerably less installed and operating reserve generating capacity than would

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[6] "Operating" reserves are comprised of "spinning" plus "quick-start" reserves. See *infra*, p. 14, n. 10.

[7] Individual members of the Committee are, of course, free to enter into contracts amongst themselves. Florida Power, for example, has bilateral contracts with both the Tampa Electric Company and Orlando for the purchase of power to coordinate the installation and maintenance of generating equipment and for emergency back-up (App. 317).

be required if it were electrically isolated (App. 164, 317).

Finally, all members of the Committee are in turn members of the Interconnected Systems Group, an organization consisting of about 140 interconnected electric utilities spanning the southeastern and central portions of the United States (App. 354). All members of the group operate in synchronism and stand ready to assist one another in case of emergency. Florida Power participates in the multistate group through interstate interconnections with the Georgia Power Company and the Gulf Power Company, both operating subsidiaries of the Southern Company (App. 316–317, 354).

The Commission Proceedings. In November 1965, Gainesville filed with the Commission an application for an interconnection with Florida Power (App. 300–312b). In addition to seeking the interconnection, Gainesville alleged unlawful discrimination in violation of the Federal Power Act on the grounds that Florida Power had interconnected with other electric systems while refusing to interconnect with Gainesville on similar terms.

Following extensive hearings ordered by the Commission, the examiner issued an initial decision in January 1968 (App. 313–341). The examiner, *inter alia,* rejected Florida Power's contention that the Commission had no jurisdiction under Section 202(b) of the Power Act to order an interconnection (App. 335–336), and found that such an interconnection would be beneficial to both utilities and the public

(App. 328). He rejected Florida Power's request for a set standby charge of about $150,000 annually, but recommended that in lieu thereof each party should share with the other on a 50–50 basis its estimated operating savings made possible by the interconnection ~~app. supp.~~ (pp. 330-333).

In an opinion and order issued in November 1968 (App. 352–381), the Commission affirmed the examiner's jurisdictional finding and also agreed that interconnection would be in the public interest. The Commission found that each system would reap financial and engineering benefits from the interconnection, Florida Power would not be required to enlarge its generating facilities and its ability to render adequate service to its customers would not be impaired (App. 356–357). The Commission's order specified compensation terms for actual energy transfers across the interconnection as a result of its order (App. 361–362); these charges were subject to little controversy and were not challenged on review.

The Commission rejected, however, both the examiner's conclusion that a 50–50 sharing of operating savings was appropriate and Florida Power's contention that it should receive a fixed standby charge for the emergency or back-up service the interconnection would provide (App. 364). The Commission held that compensation for services rendered among utilities of an interconnected network must be based on an analysis of the electrical burden each system places on the network, not of the benefits or savings that each participant realizes over alternate methods

of providing generating capability (App. 357–358, 364–365). Only this test, the Commission noted, would avoid an economic penalty for being the last to join the interconnected network (App. 358).

Analyzing the facts of this case, the Commission found that Gainesville would not place a disproportionate burden on the interconnected network (App. 363) and that Gainesville would contribute its proportionate share of instantaneous emergency service as required (App. 365). The Commission emphasized that neither Florida Power nor Gainesville was being directed to provide firm power service to the other (App. 363, n. 4)[8] and also noted that Gainesville would be required to expend some $3,000,000 for the interconnection while Florida Power would incur no expense (App. 368, 413–414).

Finally, the Commission found that neither Florida Power nor other power companies had imposed standby charges comparable to those being sought from Gainesville in any contracts covering voluntary interconnections (App. 360, n. 3).

Under these circumstances, the Commission held that Florida Power "plainly bears the burden of jus-

[8] The reserves of the interconnected system will be available to Gainesville only on an "if and when available" basis. There will be times when the system will have no spinning reserves available for short periods of time, *e.g.*, if the interconnected system's largest unit goes out unexpectedly or if transmission interconnections are open. In the unlikely event that two large units were to go out within a short period, there might be no reserves available on the system for a few hours. If Gainesville were to suffer a large outage during such a period, it would obtain no assistance from the interconnection.

tifying an apparently discriminatory imposition in this one instance" (App. 367), and that the burden had not been met.

The Court of Appeals Decision. On petition for review, the court of appeals sustained the Commission's holding that it had jurisdiction to require Florida Power to interconnect with Gainesville (App. 490, 497–501). Enforcement of the Commission's order was denied, however "insofar as no provision for the reasonable compensation to Florida Power is made" (App. 503). While the court found that there would be substantial benefits to the city, it stated that the benefits which the Commission found accruing to Florida Power were "largely illusory" (App. 501–502). The court concluded that the Commission's policy of proportionate utility responsibility resulted in a small system receiving high benefits and, because of its size, no "real obligations" whereas a large system receives no benefits but does "incur real, substantial responsibilities" (App. 503). Accordingly, the court held that the Commission's policy does not meet the standard of reasonable compensation provided in Section 202 (b) of the Act, and remanded the case for the Commission to fix a formula for computing reasonable compensation (*ibid.*). The Court enforced the remainder of the Commission's order, noting that compliance therewith need not be delayed pending resolution of the compensation issue (*ibid.*).

ARGUMENT

INTRODUCTION AND SUMMARY

1. The current rapid growth of the country's power demands makes the interconnection of electric power systems a matter of national importance, and the Federal Power Commission, pursuant to its statutory mandate,* has vigorously sought to encourage them. Interconnection allows utilities to share generating reserves and to install larger and more efficient generating units than would otherwise be possible, thus saving capital and operating expenses and significantly increasing reliability.

Under Section 202(b) of the Federal Power Act, the Commission is empowered, upon application of any state commission or any person engaged in the sale of electric energy, to order any utility subject to its jurisdiction to establish physical connection of its transmission facilities with those of another utility. The statute further empowers the Commission to prescribe the terms and conditions of the ordered interconnection, including "the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

Acting pursuant to the authority of Section 202(b), the Commission held that interconnection in this case was warranted; Florida Power does not contest this aspect of the Commission's order or the provisions for payment for power actually used. The matter that is in contest here is whether the Commission properly

*Section 202(a) of the Federal Power Act, 16 U.S.C. 824(a), specifically directs the Commission to encourage interconnections.

held that a party to an interconnection need not pay a standby charge for the emergency service made available to it simply because it has a greater economic need than the other has for the back-up service. We submit that the Commission properly concluded that standby charges are not appropriate where the parties assume proportionate responsibilities and can be expected to make proportionate electrical use of the interconnection.

The Commission's approach to compensation is appropriate for three distinct reasons. First, it will encourage utilities to seek interconnections by avoiding the imposition of economic penalties on small isolated utilities seeking to join much larger interconnected systems. Second, the approach reflects the generally prevailing practice in the industry for voluntary interconnections. Finally, the Commission has followed cost concepts which have long inhered in the regulation of utilities and the fundamental principle that utilities are not entitled to economic rents resulting solely from their size or relative economic power. See *South Carolina Generating Co.* v. *Federal Power Commission*, 249 F.2d 755 (C.A. 4), certiorari denied, 356 U.S. 912.

2. In applying its test of evaluating relative burdens and responsibilities, the Commission correctly concluded that, as Gainesville would not disproportionately draw on the interconnection for emergency power and would meet its responsibilities towards the

interconnected network, no standby charge by Florida Power was appropriate. There is no merit to Florida Power's contention that Gainesville should bear a portion of the annual charges associated with Florida Power's extensive backbone transmission grid. Under prevailing industry practice, Gainesville will meet its obligations with respect to transmission facilities by assuming the $3,000,000 cost of effecting the interconnection.

Finally, the record fully supports the Commission's finding that substantial benefits would in fact accrue to Florida Power. The court below erred in rejecting the Commission's analysis and conclusion that such benefits compared favorably with the benefits which would be realized by Gainesville.

3. The decision of the court of appeals, while on the surface appearing to give the Commission great leeway to adopt a formula to determine compensation terms, rejects the Commission's "proportionate utility responsibility" approach and requires an entirely different approach which would reflect in some manner the economic benefits received by the parties to the interconnection. In so acting, the court failed to give due deference to the fact that Congress has entrusted the regulation of electric utility interconnections to the informed judgment of the Commission and not to the preferences of a reviewing court. See *Permian Basin Area Rate Cases,* 390 U.S. 747, 767; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U.S. 591, 602.

412-476—70——3

I. THE COMMISSION PROPERLY DETERMINED THAT COMPENSATION AMONG INTERCONNECTED UTILITIES SHOULD BE BASED UPON A PROPORTIONATE SHARING OF ELECTRICAL RESPONSIBILITIES

A. THE BENEFITS OF INTERCONNECTION

To assure reliability of service, each electrical system, no matter how large or small, must maintain or have access to sufficient reserve capacity to meet unexpected demands for power or to cover scheduled or forced outages of its generation equipment.[10] If such reserve capacity is not immediately available when needed, a blackout or brownout may be precipitated. The amount of reserves a system normally maintains is essentially dependent upon the size of its largest generating unit (App. 444), since the system must, at the minimum, be in a position to replace that unit

[10] Reserve capacity must be sufficient in two distinct respects. First, at any given point in time, there must be adequate instantaneous or spinning reserves available to meet load increases and outages as they occur. Because spinning reserve requirements may fluctuate from moment to moment depending upon load variations, additional reserves (commonly referred to as "quick-start" or "ready") are necessary which can be called upon on short notice—usually ten minutes or less. In general industry terminology, spinning and quick-start reserves are collectively referred to as operating reserves, although the Florida Operating Committee designates operating reserves as "ready reserves." Throughout this brief, the general industry terminology will be used. Second, there must be sufficient installed reserve capacity that can be placed into operation as necessary to assure that adequate operating reserves will be available at the time of the annual peak load of the system, after appropriate allowance is made for scheduled on forced outages.

should it fail while in service.[11] The interconnection of several companies greatly reduces the total reserve capacity that would be required if each company operated independently, since each company need provide only a proportionate share of the operating and installed reserve requirements of the interconnected system. The savings made possible by this sharing of reserves can best be illustrated by the following example.

Assume that four electric systems operate in isolation and that each has an annual peak load of 500 mw served by several generating units the largest of which is 200 mw. At a minimum, each system would have to provide 700 mw of installed generating capacity (500 mw to cover the annual peak load plus 200 mw of installed reserves equal to the largest unit). If we assume further that each system operates its

[11] Relatively small electric systems, for the most part, do not maintain either installed or operating reserves in excess of the capacity of their largest units; larger systems, however, will usually establish installed and operating reserve requirements in excess of the size of a single unit, depending upon the mathematical probability of simultaneous outages of generating equipment on a system. Additionally, varying combinations of spinning and quick-start reserves are utilized by different systems to meet operating reserve requirements. The Florida Operating Committee has established an operating (or "ready," in their terminology) reserve requirement equal to 1½ times the capacity of the largest generating unit operating at any given time on the interconnected system of the Committee's members. Two-thirds of this amount must be spinning with the remainder available for service in ten minutes or less (App. 164).

200 mw unit near capacity throughout the year,[12] spinning reserves equal to the output of that unit would constantly be required. If the four systems are to be interconnected pursuant to the Florida Operating Committee formula, total generating capacity need not exceed 2300 mw (total annual peak load—if all peaks occur during the same period—plus operating reserves of 300 mw, *i.e.*, 1½ times the largest generating unit). This 2300 mw capacity requirement would be met by requiring each system to maintain generating capacity equal to 115 percent of its annual peak load. Each system would thus have to maintain only 575 mw of generating capacity—125 mw less than would be required if operating in isolation. The interconnected system as a whole would require the constant maintenance of 200 mw of spinning reserves and 100 mw of quick-start reserves; each system's pro rata share of operating reserves would amount to only 75 mw. Thus, interconnection of the four systems would result in substantial capital savings by reducing installed generating capacity requirements and substantial operating savings by reducing operating reserve requirements.

Interconnection also permits utilities to install larger, more efficient generators than would otherwise be feasible, as the losses in generating capacity which might be brought about by outages of such larger generators would in part be covered by the extra reserves made available through interconnection (although, of course, if a new unit exceeded in size

[12] Larger units are generally more efficient than the smaller units and thus the smaller units would be shut down first as load levels decrease.

the largest existing unit on the interconnected system, the reserve requirements of the system as a whole would increase).

B. THE COMMISSION'S APPROACH ENCOURAGES INTERCONNECTIONS AND IS CONSISTENT WITH INDUSTRY PRACTICE AND GENERAL REGULATORY PRINCIPLES.

The Commission concluded that, in order to maximize interconnections to achieve the above-described benefits, it is necessary that the terms of compensation between utilities required to interconnect reflect only the net electrical burden each utility places upon the interconnected system (App. 358). We shall set forth at pages 26–30, *infra,* our reasons for believing that the Commission properly concluded that Gainesville would not disproportionately draw on the proposed interconnection with Florida Power. In this section, we shall show the appropriateness of the general principle that standby changes should not be imposed in such a situation.

1. *Encouragement of Interconnections.* In refusing to impose a standby charge on Gainesville, the Commission recognized that a utility already a member of an interconnected pool would normally be in less need of an interconnection with a particular isolated system than the isolated utility would be, and that the benefits of interconnection to the isolated utility in terms of immediate savings of capital and operating expenses would normally be larger. Consequently, were compensation to reflect to some degree such savings, an isolated electric system joining a power pool would almost always be required to make substantial payments even though it did not draw disproportion-

ately on the interconnected network for emergency power. These added charges would make it more likely that small utilities would forgo requesting interconnection. The Commission, therefore, properly rejected the imposition of such "economic penalties for being the last one on the interconnected network" (App. 358).

In addition to discouraging interconnections, imposition of the type of standby charges for emergency power sought by Florida Power would, as the Commission found (App. 365), tend to diminish the benefits of interconnection by penalizing utilities for installing large generating units to meet projected growth in annual peak loads. Under Florida Power's proposal, its standby charge would be based directly on the size of Gainesville's largest generating unit (App. 331), presumably on the theory that the amount of emergency power that Gainesville might need would depend on the size of its largest unit. Thus, if Gainesville were to install a unit in excess of 50 mw (its largest unit to date), the standby charge to Florida Power would increase.[13] Gainesville, and other similarly situated utilities—should Florida Power's type of standby charge become commonplace—would thus be likely to forgo the economies of large generating units [14] in favor of multiple, less

[13] The standby charge would presumably be limited by the capacity—which could always be increased—of the interconnection to deliver emergency power.

[14] Large generating units permit both capital savings—as the construction (including land acquisition) costs per mw of capacity decreases as the size of the generating unit increases—and operating savings—as larger units generally operate more efficiently, thus reducing fuel and other costs.

efficient smaller units. In short, even if interconnections continued to occur in the face of standby charges, the benefits flowing from such interconnections would not be maximized.

2. *Consistency with industry practice.* The Commission's authority to order interconnections under Section 202(b) of the Federal Power Act can, by the terms of the statute, only be exercised upon the application of a state commission or an electric utility. The vast majority of interconnections between utilities are effected voluntarily. Imposition of additional charges, not heretofore thought justifiable by the industry, on small utilities might well disrupt the entire composition and structure of the electric industry—which is now composed of systems of diverse size working together in power pools based on the premise that a sharing of burdens and responsibilities is fair to all. If the larger utilities can lawfully impose additional charges upon smaller utilities, either initially or when pooling arrangements can be reopened, it seems improbable that they will hesitate to do so. In contested interconnection cases, therefore, it is appropriate that Commission decisions establishing compensation terms take into account the terms of current interconnection arrangements negotiated at arms length. An examination of the terms governing voluntary interconnections to which Florida Power is a party and of the terms prevailing among other interconnected utilities demonstrates that the Commission's decision in this case does reflect prevailing industry practice.

As noted above (*supra,* pp. 6–7), Florida Power is interconnected with the other members of the Florida Operating Committee and with two operating subsidiaries of the Southern Company. Among the Committee members, no standby charge for emergency service is paid by Florida Power to Florida Power & Light—by far the biggest member of the Committee—nor does Florida Power receive any such charge from Tampa Electric, Orlando or Jacksonville, its smaller partners. Additionally, neither Florida Power nor the other Committee members pay a standby charge to any subsidiaries of the Southern Company through which they receive back-up power from other parts of the country. Finally, as the Commission noted (App. 360, n. 3), not one of the pooling agreements and bilateral agreements between large and small systems reviewed by the Commission's staff (App. 441; Ex. 99) provides for any standby charge for back-up service of the type sought to be imposed by Florida Power on Gainesville. As none of these voluntary arrangements disclosed any attempt by the utilities involved to calculate relative benefits in terms of savings in capital and operating expenses made possible by an interconnection [15] and to reflect such relative benefits in compensation terms, the Commission was fully justified in rejecting such an approach here.

[15] Florida Power acknowledged before the Commission that there would be administrative difficulties in attempting to calculate annual savings in dollars as would have been necessary under the examiner's proposed formula for splitting on a 50–50 basis the joint savings of the two utilities from the interconnection (App. 364).

Florida Power also asserts (see App. 368) that its proposed annual standby charge of about $150,000[16] is justified to reimburse Florida Power for a pro rata share of the cost of maintaining its extensive transmission system, without which emergency power could not be transmitted to Gainesville when needed. Again, reference to prevailing industry practice reveals that transmission network costs are not shared by parties to an interconnection provided that each party meets certain minimal responsibilities.[17]

Staff witness Abraham Braitman, an electrical engineer with the Commission, testified[18] at some length concerning the varying pooling and coordinating agreements that exist among interconnected utilities across the nation (App. 424–430).[19] With respect to the sharing of transmission system responsibilities

[16] Based on a charge of $3.08 per year per kw of capacity of Gainesville's largest generating unit (50 mw, which equals 50,000 kw) (App. 331).

[17] We show at p. 29, *infra*, that Gainesville assumes such responsibilities.

[18] A portion of Mr. Braitman's testimony is set forth at pages 238–274 of the appendix. This portion of the appendix is identical to the appendix filed in the court of appeals. As further portions of his testimony were found to be relevant to the proceedings before this Court, all of his relevant testimony (including a reprinting of all of the portions set forth at pages 238–274) now appears at pages 422–466 of the appendix. All references to Mr. Braitman's testimony in this brief will be to the latter set of pages.

[19] His testimony covered both fully coordinated pooling agreements under which total pool capacity resources are utilized to meet total pool loads (App. 427) and more limited pooling arrangements where each member is required to have sufficient generating capacity to meet its own loads and to maintain specified minimum reserves (App. 427–428). Refer-

within pools requiring each member to meet its own loads and provide specified reserves, Mr. Braitman noted that each member of such pools is further required to have sufficient transmission capacity to deliver its generating capacity reserve obligation to the pool transmission grid and to construct transmission facilities traversing its service territory (App. 428). No further attempt is made to apportion transmission investment responsibility among pool members (*ibid.*). Nor are participants on the periphery of the pools reviewed by the witness required to pay a portion of the annual costs of the pools' backbone transmission grids; they merely are obligated to maintain sufficient interconnection capacity to deliver their reserve obligations to adjacent pool members (App. 428–429).

Thus, the Commission's rejection of Florida Power's claim for recovery of transmission costs (App. 368) is consistent with the practice among power pools whose reserve sharing arrangements are similar to those existing on an informal basis among the members of the Florida Operating Committee. From a cost viewpoint, therefore, the Commission was correct in concluding that no additional monetary compensation

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ence was also made to interconnections between large and small utilities (App. 429). Mr. Braitman did not consider the members of the Florida Operating Committee to be a "pool" (App. 430), because his definition of a pool required each member to be "contractually obligated" to assume specified reserve and other responsibilities (App. 425), but he acknowledged the existence of an informal agreement among the Florida utilities to maintain specified operating reserves (App. 430, 436). He also noted the possibility that the Committee would evolve into a "pool" (App. 436).

is warranted for back-up service when an interconnected company maintains reserves and transmission and interconnection facilities commensurate with its demands on an interconnected network.

Finally, there is nothing inconsistent between the decision in this case and instances in which charges for standby emergency power have been approved by the Commission. *E.g., U.S. Department of the Interior, Southeastern Power Administration,* 39 FPC 992; *U.S. Department of the Interior, Southeastern Power Administration,* Commission Order Confirming and Approving Rates and Charges, issued June 29, 1970. Those cases involved the firm reservation of generating capacity on the system of the Southeastern Power Administration (the regional marketing agency for federal power) to meet emergencies on the purchasers' own electric systems. Standby charges are entirely appropriate in such cases since the capacity reserved must be made available to the purchasers on demand and thus cannot be counted on by the Southeastern Power Administration to be available to meet other projected demands of its system. By contrast, Florida Power would be under no firm obligation to provide power or reserves to Gainesville; Gainesville would have no recourse if, at a time when it needed emergency power, none was available on the interconnected system. The charge Florida Power seeks to impose would be for the mere existence of an interconnection and amounts to an economic penalty.

3. *Consistency with prior Commission practice.* The court of appeals' requirement that relative benefits

be taken into consideration in determining compensation terms among parties to an interconnection is contrary to the Commission's fundamental principle of setting rates on the basis of costs and of preventing utilities from charging economic rents resulting solely from their size or economic position. See, *e.g., South Carolina Generating Co.* v. *Federal Power Commission*, 249 F.2d 755 (C.A. 4), certiorari denied, 356 U.S. 912. In that case, an electric utility sought approval of a rate contract with another utility for the sale of a portion of its generating capacity where the charge, which exceeded the selling company's costs, represented a splitting of the difference between the seller's costs and those the purchaser would have incurred by constructing its own plant. The Commission reduced the proposed charge, holding that the reasonableness of the rate should be determined by the cost of service of the utility furnishing the generating capacity and not the value of the service to the purchaser. In its view, a value of service method would be "a radical departure from established ratemaking principles utilized by this Commission in the regulation of public utility rates in the electric industry where there is a clearly ascertainable cost of service" 16 FPC 52, 57.[20] While remanding the case to the

[20] In *Public Service Company of Oklahoma*, 25 FPC 656, the Commission approved rates charged by one party to a voluntary interconnection agreement because the revenues derived would not exceed the company's cost of service including an allowance for a fair return. Relying on its *South Carolina Generating Company* opinion, the Commission stated that "value of service" had no application to the facts of this case. *Id.* at 662.

Commission on other grounds, the Fourth Circuit on review affirmed the Commission's rejection of the value of service approach in fixing rates, noting that the Commission's insistence on rates based on the cost of service was in accordance with orthodox methods of ratemaking in utility cases. 249 F.2d 755, 759–762.

The decision in *South Carolina Generating Co.* is consistent with *Natural Gas Pipeline Company* v. *Federal Power Commission*, 120 F. 2d 625 (C.A. 7), reversed on other grounds, 315 U.S. 575. In that case, the Commission's prescription of a 6½% rate of return was attacked on the ground, *inter alia*, that reasonableness of rates is determined "not by what profit it is reasonable to make, but what is reasonable to charge for the services rendered." 120 F. 2d at 633. The court of appeals rejected this contention (120 F. 2d at 633) as inconsistent with

> the well-established holdings, backed by reason and experience, to the effect that a fair rate of return, on a fairly established rate base, supplies the correct test for reasonableness. The value of service to users is neither a reasonable rule, nor supported by judicial decisions.

Accord, *Mississippi River Fuel Corporation* v. *Federal Power Commission*, 121 F. 2d 159, 164 (C.A. 8).

II. THE COMMISSION CORRECTLY CONCLUDED THAT GAINESVILLE WOULD PLACE AN UNDUE ELECTRICAL BURDEN ON THE PROPOSED INTERCONNECTION AND WOULD ASSUME PROPORTIONATE ELECTRICAL RESPONSIBILITIES

A. EVALUATION OF BURDENS PLACED ON THE INTERCONNECTION

While there is no doubt that Gainesville *needs* the disputed interconnection more than Florida Power in the sense that if the interconnection were not effected Gainesville would have to construct additional generating capacity, the record fully supports the Commission's finding (App. 365, 411–412) that Gainesville would be contributing its proportionate share of instantaneous emergency service to Florida Power.

The Commission's staff presented an exhibit (Ex. 98) to demonstrate the electrical burden that Florida Power could be expected to place on the interconnected system. As explained by staff witness Braitman (App. 436–439) at the hearings before the Commission (which were held in 1967), the exhibit made use of projected 1969 loads and generator dependability ratings to show the probability that during 1969 the loads of the Florida Power system would exceed the system's generating capacity.[21] Considering Florida Power as a unit, its loss of load probability was between 0.0050 and 0.0061 in 1969 (App. 439, 453); stated another way, for every 1,000 hours of operat-

[21] The exhibit included as part of Florida Power's generating capacity the 200 mw of capacity of Tampa Electric's system contractually committed to Florida Power (App. 439, 453; see *supra*, p. 6.

ing time, there would be between 5 and 6.1 hours during which Florida Power would not be able to meet its loads from its own generation (App. 454). To meet such loads, of course, Florida Power would need to draw on its interconnections with other utilities. Under the proposed interconnection, Gainesville would supply its pro rata share of emergency power to meet Florida Power's demands, as Gainesville would be under the same operating reserve requirements as the other Florida utilities interconnected with Florida Power. We demonstrate at pp. 31–32, *infra,* that Gainesville could at times (including the time of Florida Power's annual peak load) provide emergency power in significant quantities.

Mr. Braitman also testified that, concurrently with the preparation of Exhibit 98, he calculated the probability of a loss of load in 1969 on the Gainesville system considered alone. Assuming that no new generating units were added (other than the two gas turbines which were under construction at the time of the hearings), his calculation yielded a loss of load probability of 0.000043 (App. 461). In other words, if the interconnection were made by 1969, Gainesville would depend on it for emergency power 4.3 out of every 100,000 hours (less than 25 minutes per year).[22] Thus, at least through 1969, the record estab-

[22] In 1969, Gainesville's installed generating capacity would still substantially exceed the 115 percent of annual peak load requirement imposed by the Commission as a condition of interconnection (App. 376), as it would then have 138.4 mw (see *supra,* p. 4) of generating capacity to meet a projected 1969 peak load of only 88.4 mw (Ex. 1). Gainesville's reliance on the interconnection in years subsequent to 1969 would in-

lishes that Florida Power would be far more likely to draw on the interconnected system for emergency power than would Gainesville.

B. EVALUATION OF RESPONSIBILITIES IMPOSED BY THE INTERCONNECTION

In support of its remand to the Commission, the court below stated (App. 502):

> But, although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the *added obligation* imposed under the terms of the ordered interconnection. And this burden will be reflected in their cost-based rates. * * * [Emphasis added.]

Contrary to this statement, however, the Commission's interconnection order does not impose any *added obligations* on Florida Power as the order does not require Florida Power to make any firm commitment of power to Gainesville;[23] nor will Florida Power be re-

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crease if its reserve margins decline. However, as the Commission noted on rehearing (App. 411), there was evidence that during the 10-year period from 1970–1979, Gainesville's average minimum reserves at the time of Florida Power's annual peak load would be 43 percent (App. 435)—well in excess of the Commission's minimum reserve requirement.

[23] In *Crisp County Power Commission* v. *Georgia Power Company*, 42 FPC 1179, 1189, 1195–96, the Commission specifically noted that, since Georgia Power did not have to reserve capacity on its system or purchase capacity from other systems in order to provide emergency service to Crisp County under the ordered interconnection, interconnection charges should not be assessed because no electrical burdens were placed on the Georgia Power system.

quired to expand its facilities. Florida's only obligation is to permit the interconnection to take place so that Gainesville may draw power in emergencies (for a reasonable fee) to the extent, and only to the extent, that such emergency power is available on the interconnected network. The availability of emergency service to Gainesville would be subordinate to Florida Power's own needs and any firm commitments to other systems with which Florida Power is interconnected.

The Commission's order does, however, impose significant obligations on Gainesville—obligations commensurate with the magnitude of Gainesville's participation in the interconnected network. First, Gainesville is obligated to construct and pay for, at an estimated expense of $3,000,000 (App. 368, 413–414), the interconnection facilities and the transmission line from such facilities to the Gainesville system (App. 375–376). By undertaking this expenditure, Gainesville will meet the traditional obligations of interconnected utilities (see, *supra,* pp. 21–22) to maintain sufficient interconnection and transmission facilities to enable them to deliver when needed their proportionate share of emergency power to the interconnected networks. Second, Gainesville is obligated to maintain installed generating capacity equal to at least 115 percent of its annual peak-hour demand (App. 376) and to maintain operating (or "ready" in the Committee's terminology; *see supra,* p. 14, n. 10) reserves in accordance with the procedures established by the Florida Operating Committee (App. 377). By

By complying with these reserve requirements, Gainesville will assume its proportionate share of the burden of providing adequate emergency reserves for the interconnected system of Florida utilities; the integrity of the Florida Operating Committee interconnected system would thus be preserved.

From the above analysis, it follows that Florida Power's requested standby charge for back-up service cannot be justified on the grounds either that Gainesville will place a disproportionate burden on the interconnection for emergency service or that Gainesville will fail to meet fully its electrical responsibilities as a member of the interconnection.

C. EVALUATION OF BENEFITS FROM THE INTERCONNECTION

The court of appeals found that the benefits to Florida Power from the interconnection are "largely illusory" (App. 502). The record, however, supports the Commission's finding that Florida Power *would* receive important and substantial benefits (App. 365–367). While we remain firmly of the view that a weighing of relative benefits is inappropriate to a determination of compensation terms among parties to an electrical interconnection, we emphasize here that the disparity of benefits between Gainesville and Florida Power is not as awesome as the court below indicated.

Among the benefits Florida Power would receive are gains in reliability. The results of the probability studies embodied in Exhibit 98 (see *supra,* pp. 26–28) demonstrate that an interconnection between Gaines-

ville and Florida Power would improve the reliability—*i.e.*, lessen the chance of a loss of load—of the Florida Power system even if Gainesville's installed reserves were reduced to zero (App. 438–439). Reliability of Florida Power's service in the Gainesville area would also improve as the company could rely on the fast rate of response of Gainesville's spinning reserves to meet sharp increases in area loads (App. 366, 414). Gainesville would supply this added reliability on account of both the fact that Florida Power has no generating facilities in the Gainesville area and the fact that the Gainesville generators are adjusted to respond to load increases at a faster rate than any of Florida Power's generators (App. 449).[24]

The record also establishes that at times Gainesville will be able to contribute emergency power to Florida Power far in excess of the 2.5 mw to 6 mw referred to by the examiner (App. 323) and cited by the court of appeals (App. 494). In discussing this point in its opinion denying rehearing, the Commission noted that the staff had shown that in some emergencies Gainesville would be able to contribute as much as 60 mw to 100 mw (limited by the capacity of the interconnection) to the interconnected system (App. 411). This conclusion was based on staff studies which showed that even after interconnection and at least through

[24] The contribution to improved bulk power supply reliability from an additional source of spinning reserves with quick load pick-up characteristics is well recognized by the electrical utility industry (A Report to the President by the Federal Power Commission, December 6, 1965, *Northeast Power Failure*, p. 44, Item 9).

1979, Gainesville would continue to maintain reserves substantially in excess of the 15 percent requirement of the Commission (App. 411, 435; Ex. 81). When these projected reserves of Gainesville are considered in conjunction with the substantial load diversity between Florida Power and Gainesville[25] (App. 216-218, 435), it is clear that Gainesville will be capable of providing significant emergency back-up service to the interconnected system. In view of these benefits to Florida Power, the Commission was justifiably "satisfied that the interconnection will permit a reciprocal exchange of benefits to the mutual advantage of both systems" (App. 412).

III. THE COURT BELOW FAILED TO GIVE DUE DEFERENCE TO THE COMMISSION'S INFORMED JUDGMENT IN THIS HIGHLY TECHNICAL AND COMPLEX FIELD

In remanding the case to the Commission without "even whisper[ing] what the formula should be" for determining compensation (App. 503), the court of appeals was apparently under the impression that it was giving the Commission wide latitude within which to determine under Section 202(b) of the Federal Power Act the "compensation * * * reasonably due" Florida Power from Gainesville as a result of the interconnection. In fact, however, the court's rejection of the Commission's "proportionate utility re-

[25] Load diversity exists when the annual peak loads of two systems occur at different times during the year. As noted above, p. 27, n. 22, during the period 1970-1979, Gainesville's average reserves at the time of Florida's annual peak load would be 43 percent (App. 411, 435).

sponsibility" approach has eleminated the only arrangement which, in the Commission's judgment, fairly reflects the economics of the situation and properly encourages the interconnection of electrical systems. By so doing, and by insisting upon an approach which would take into account the relative benefits received or savings realized by parties to an interconnection, the court failed to give appropriate deference to the Commission's judgment in this highly complex and technical field. See *Permian Basin Area Rate Cases,* 390 U.S. 747, 767; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U.S. 591, 602. As this Court recognized in *Permian,* the Commission must be "free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests." 390 U.S. at 767.

CONCLUSION

The judgment of the court of appeals insofar as it denied enforcement of the Commission's order should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioner*,

v.

FLORIDA POWER CORPORATION, *Respondent*

No. 469

FEDERAL POWER COMMISSION, *Petitioner*

v.

FLORIDA POWER CORPORATION, *Respondent*

On Certiorari to the United States Court of Appeals for the Fifth Circuit

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MOTION OF AMERICAN PUBLIC POWER ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON THE MERITS, AND BRIEF

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On Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION OF AMERICAN PUBLIC POWER ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON THE MERITS

The American Public Power Association respectfully moves this Court for leave to file the accompanying brief on the merits in these cases as *amicus curiae* in support of the position of Gainesville Utilities Department and the City of Gainesville, Florida (No. 464), and in support of the position of the Solicitor

General on behalf of the Federal Power Commission (No. 469). The attorneys for the petitioners have consented to the filing of this brief but the attorneys for the respondent, Florida Power Corporation, have not.

The applicant was granted leave to file a brief as *amicus curiae* in support of Gainesville's petition for certiorari, and did so. The present application is submitted on the same grounds.

American Public Power Association is a national service organization. It has an interest in this case in that it represents more than 1,400 local, publicly owned electric utilities in 48 States, Puerto Rico, the Virgin Islands and Guam. Many of these publicly owned utilities are directly and seriously affected by the decision in the court below.

The basic issue presented in both cases is the terms and conditions which are to prevail for interconnection of facilities between a large and small electric utility pursuant to section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)). The court below adopted a rule of payment between the interconnecting systems which is based upon the benefits which accrue to each, and set aside the Commission's determination that payments should be set according to the responsibilities borne by each system and the costs associated therewith. *Florida Power Corporation* v. *Federal Power Commission,* 425 F.2d 1196 (C.A. 5, 1970).

The decision of the court below presents an important question of federal law which has not been, but should be, settled by this Court. If allowed to stand, without review, the decision will leave in a state of confusion interconnection negotiations under way in many parts of the country at the present time. Fur-

thermore, the decision will seriously impair the prospects for interconnection and coordination between many large and small electric utilities in the future. These are needed to improve service reliability and prevent blackouts, voltage reductions and other disruptions.

Workable interconnections and coordination agreements are an absolute necessity for the survival of many of the dispersed, publicly owned utility systems, which meet an important portion of the Nation's electric energy needs. Many of these systems are members of A.P.P.A. The Association, therefore, respectfully requests this Court to grant it permission to file its annexed brief *amicus curiae*.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

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On Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF OF THE MERICAN PUBLIC POWER ASSOCIATION AS AMICUS CURIAE, ON THE MERITS

INTEREST OF THIS AMICUS CURIAE

The American Public Power Association is a na-onal service organization representing about 1,400 cal publicly owned power systems in 48 States, uerto Rico, the Virgin Islands and Guam. They nge in size from very large systems, such as the De-rtment of Water and Power of the City of Los ngeles and Seattle City Light, down to the smallest

of publicly owned systems, serving small rural communities. The Association's membership includes municipalities, public utility districts, cooperatives, and other consumer-owned public power systems.[1] Interconnection with the large privately owned power systems which adjoin them is of vital importance to many of the smaller publicly owned utilities. This is not only because of the necessity of obtaining power during emergencies, and during scheduled shut-down of generating equipment for maintenance, but because of the economies of scale which are obtainable by use of the very large generating units which the industry is now installing (some as large as 1 million kilowatts), but which no single small utility can afford. Beyond this, advantages inure to all utilities, large and small, from participation in great multi-system power pools, some of them involving 30 States or more, assuring entire regions against the consequences of local accidents or shortages.[2]

Such interconnections can be compelled by the Federal Power Commission under section 202(b) of the

---

[1] The National Power Survey of the Federal Power Commission (1964) reported (p. 267) that of 3,617 systems serving the country (excluding Alaska and Hawaii), 3,190 are "small systems" (defined as systems with peak load requirements of about 25,000 kilowatts or less). Of these, 1,997 were reported as publicly owned, principally by municipalities, and 904 were rural electric cooperatives. 28 percent of the total were reported as generating all or part of their requirements, while 69 percent purchased their entire needs. Of the cooperatives, self-generation, as a proportion of total requirements, was about 18 percent in 1963 (*id.*, p. 270). Among the small municipalities, 742 generated all or part of their requirements in 1962, while 1,130 purchased their entire requirements (*id.*, p. 270). The American Public Power Association states that such later statistics as are available are consistent with these proportions.

[2] This is developed in Part II of the Argument, *infra*.

Federal Power Act (16 U.S.C. sec. 824a(b)). This case arises under that provision of the Act.

This case is of utmost importance to the publicly owned sector of the Nation's power industry, and particularly to the smaller cities and electric cooperatives, because of the extraordinary and wholly novel rationale of the court below in remanding the case to the Commission. The court directed the Commission to redetermine the interconnection compensation due from a small city to a power company some 15 times its size,[3] which, in turn, is a member of a five-utility pool in Florida (App. 354) and is interconnected with power systems in other States (*id.*): namely, that relative disparity in size, of itself, indicates that the benefits of interconnection flow from the larger to the smaller utility, and that this imposes upon the small utility an obligation to pay to the larger a proportion of the benefits that the smaller utility receives from the interconnection (App. 503), in addition to full compensation for all costs of service incurred by the larger utility.

QUESTION PRESENTED

That we are not alone in seeing the foregoing significance in the decision of the court below is shown by the Solicitor General's phrasing of the question on which this Court granted certiorari:

> "Whether the Federal Power Commission, in ordering the interconnection of electric power companies, must condition the interconnection upon compensation terms based on the relative benefits

---

[3] In 1965 Gainesville's system had a total capability of 108,400 kw. That of Florida Power Corporation's system had a capability of 1,595,000 kw (App. 354).

> accruing to each utility rather than based upon the relative burdens that each places on the interconnected network."[4]

To this we may add that while the question arises here on a proceeding under section 202(b) to compel an interconnection, the same issue is presented by sections 205 (16 U.S.C. sec. 824d) and 206 (16 U.S.C. sec. 824e), which relate to fixing the rates at wholesale. If the basis of compensation to a large supplier of power is to shift from "cost of service" to "benefits conferred" on the buyer when the smaller purchaser owns generating equipment, is the same new standard to apply if the purchaser owns no generating capacity? Or is the purchaser penalized only if it generates some of the power that it consumes? How is benefit to be measured—by comparison with the next most costly source of power? Is the seller in such cases entitled to cost of service, including reasonable return, plus a profit equal to part of the buyer's savings? Such are some of the unavoidable implications of the decision of the lower court. Manifestly, if the rate to be charged by large utilities to small ones is to be freed from the hitherto accepted criterion of equation with the seller's cost of service, including a reasonable rate of return, and is to be newly equated with the relative benefits accruing to the small purchaser and the large seller, Pandora's box has just been opened by the Fifth Circuit's decision. Neither the Commission nor the courts have held anything like this in the past.

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[4] Petition of the Solicitor General for a writ of certiorari, July 1970, p. 2.

STATEMENT OF THE CASE

The Federal Power Commission's Opinion

The Federal Power Commission, pursuant to section 202(b) of the Federal Power Act (16 U.S.C. sec. 824a(b)), ordered Florida Power Corporation to permit the City of Gainesville, Florida, to interconnect its power system, at Gainesville's expense, with that of the Corporation, on terms stated in the opinion (App. 352) and order (App. 380).

The following extracts from the Commission's opinion explain the transaction. They should be read against the fact which the Court of Appeals later found controlling: the disparity in size between the two (App. 503). Florida Power Corporation is some fifteen times the size of Gainesville's power system, measured in terms of installed generating capacity (App. 354), is a member of a five-utility pool blanketing the State of Florida, and operates in parallel with the Interconnected Systems Group (App. 354),[5] whereas Gainesville owns a completely isolated system (App. 353). The interconnection order was to end this isolation (App. 357). The Commission said (App. 358):

> *"Uses of the Proposed Interconnection*
>
> "All parties agree that the contemplated interconnection would be used initially as follows: for purposes of sharing generating reserves between Florida Power and Gainesville; to facilitate the exchange of hourly non-firm economy energy transfers between the two systems; for weekly or other

[5] The opinion in Cincinnati Gas & Electric Co., et al. v. FPC, 376 F.2d 506 (C.A. 6, 1967), describes the Interconnected Systems Group as consisting of 142 utility systems in 32 States.

short term purchases of electrical capacity and related energy by the Corporation or the City; to permit either system to supply to the other replacement energy during periods of scheduled outage for equipment maintenance purposes; and to meet system electric needs during emergency outages of operating equipment of the City or Florida Power.

"The degree to which these various types of service will be utilized by either party is a matter for decision by personnel of Florida Power and Gainesville. Electrical flows between the systems to complete economy energy transactions, short term sales of electric capacity and related energy, maintenance replacement energy and emergency service will be controlled by the system dispatchers.

"In addition to scheduled transfers between Florida Power and Gainesville, there will be non-scheduled or inadvertent flows through the proposed interconnection. These flows will be instantaneous and occur as generating sources and connected electric loads shift. Depending upon the originating cause they may be in the direction of Florida Power or in the direction of Gainesville.[2] As in the case of scheduled flows, the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either direction is the

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"[2] [FPC footnote] Flows in either direction may reflect occurrences on the Florida Power or Gainesville systems, the systems of other members of the Florida Operating Committee with which the Corporation interconnects, or the systems of utilities operating outside the State of Florida which are electrically connected with Florida Power. Presently, approximately 94 percent of the total installed generating capacity of the Nation's electric utilities is interconnected and operates in electrical synchronism, including members of the Florida Operating Committee."

electrical capacity of the facilities to be installed between the Company and City, 60,000 kva.[3]

(App. 360):

"[3] [FPC footnote] Various briefs of Florida Power denominate these inadvertent transfers as instantaneous emergency service. They are urged as a principal justification for the Corporation's requested 'standby charge' of $3.08/kw up to the capacity of the City's largest generating unit. Gainesville does not seek to apply any such charge against the Company. Florida Power does not assess a similar charge against any other system with which it interconnects, nor does any other member of the Florida Operating Committee. Indeed, the staff's review of pooling agreements and bilateral arrangements between large and small systems described in the record did not reveal any other example of such a charge."

"Uses of System Generating and Transmission Facilities

"Under the terms and conditions of the interconnection as specified in this opinion and order, each system (Florida Power and Gainesville), will be responsible for its own generating capacity and reserve requirements.

"We accept and approve the Examiner's conclusion as to the installed and operating reserves of Gainesville and Florida Power. As expressed in this opinion, we are satisfied that an appropriate basis has been shown for evaluating Gainesville's generating resources and for assigning to the City a reserve responsibility. Briefly, they are those requirements which apply to Florida Power as a member of the Florida Operating Committee, and those which the Corporation applies to itself by reason of its utility operating practices.

"As set forth in finding (7) (a), Gainesville is required to own or secure from others generating capacity equal to or greater than 115 percent of the City's estimated annual peak hour demand. Under finding (7) (c), Gainesville must maintain

ready reserves up to a limit of 15 percent of the City's estimated annual peak hour demand and up to a limit of 10 percent of that demand for spinning reserves. In the light of current reserve practices being followed by Florida Power and other members of the Florida Operating Committee, these requirements will insure that Gainesville discharges its utility service obligations to provide sufficient generating capacity and resources, installed and operating, to supply the needs of its utility consumers.

"Following completion of the proposed interconnection, Gainesville's transmission facilities (principally the 115 kv line to be constructed from the City's existing circuits to the point of interconnection at Florida Power's Archer Substation) will function as a means of interconnecting the City's system with that of Florida Power. Florida Power's transmission network functions, and will continue to function, as a means of interconnecting the Corporation's own generating, purchased power and interchange sources and for delivering power to the Corporation's load centers. After connection, Gainesville will become an additional interchange power source on that network."

(App. 361):

"Compensation

"Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection. There will be no direct facilities cost to Florida Power. Depending upon final construction plans, the City's capital costs for this purpose will be in the order of $3,000,000.

* * * * *

(App. 361):

"Insofar as the proposed interconnection is used for economy energy, maintenance replacement

energy and emergency service, we adopt the types of compensations (financial payment or return in kind) to Gainesville and Florida Power as set forth in the Examiner's decision and findings (7) (b), (d), (e) and (g) (1) below. The parties do not object to the Examiner's decision in these respects.

* * * * *

(App. 363):

"These charges for services, of which either party may avail itself,[4] will adequately compensate both Florida Power and Gainesville in providing the services. The reserve capacity which we are requiring Gainesville to maintain will assure that Gainesville does not unduly burden Florida Power. The record in this case demonstrates that Gainesville will place no disproportionate burden or reliance on the facilities of the Corporation and thus should not be penalized either in terms of greater reserve capacity requirement than that carried by the other systems in the coordinating area or in terms of a demand charge."

"[4] [FPC footnote] We emphasize that in this particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other."

In addition, however, Florida Power urged that as the interconnection would save Gainesville $300,000 per year in costs, related to 50,000 kw. of generating capacity which Gainesville would have to maintain as spinning reserve for emergencies if this interconnection were not made, Florida Power should receive compensation in recognition of that benefit (App. 360, n. 3; App. 363). The Presiding Examiner had agreed with Florida Power, and had recommended payment by Gainesville to Florida Power of 50 percent of the saving (App. 363-64). Before the Commission, the

corporation asked approximately the same amount, computing it as $3.08 per kilowatt times 50,000 kilowatts, relating it to fixed charges (App. 360, n. 3; App. 363). The Commission refused, saying (App. 364-65):

> "We agree with Gainesville and with staff that the record in this proceeding does not establish any satisfactory justification for the imposition of a per kw demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate.
>
> "The reasoning of both Florida Power and the Examiner is inconsistent with what we have determined to be the appropriate analysis of the basic issues here presented: sharing the responsibilities of interconnected operations. As we have explained, that sharing must be based upon, and follow, the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive. Benefits received in any given situation may approximate these responsibilities or they may not. In the course of negotiation of voluntary pooling arrangements, benefits received may, on occasion, serve to offset burdens imposed in determining the appropriate charge for particular services rendered or facilities supplied. But where, as here, the cost of providing such services and facilities and the appropriate charges therefor have equitably been determined after a careful analysis and apportionment of the burdens and responsibilities of each party, there is no basis for any further consideration of relative benefits as proposed by the Examiner."

(App. 365):

> "The evidence before us shows that Gainesville will be contributing its proportionate share of in-

stantaneous emergency service and installed generating capacity, including reserve capacity.

"Moreover, the specific type of demand charge requested by Florida Power, namely, the imposition of a charge based upon the size of Gainesville's largest generating unit, would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units. Without such a demand charge, Gainesville could participate more fully in coordinated planning including staggered construction with Florida Power and other systems in Florida to the mutual benefit of all such systems."

It is the decision of the Commission on this issue that brings the case to this Court.

The Commission went on to say (App. 365):

"If we were to appraise Florida Power's request for an annual standby charge in terms of a 'splitting of the benefits' test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits and corporate financial savings."

And it developed this point at some length. But, in our view, the question of the ratio of benefits is not relevant to the issue now before the Court, and we do not argue that issue. Our position, stated in more detail later, is that the compensation to which a party to an interconnection is entitled is limited to cost of service, irrespective of the relative benefits of the interconnection to the parties thereto. The court below was mistaken in reading the Commission's order as requiring Florida Power to "bear the allocated fixed cost represented by the added obligation imposed under

the terms of the ordered interconnection." The Commission had said the opposite (App. 363, n. 4):

> "We emphasize that in this particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other."

And (App. 363):

> ". . . The record in this case demonstrates that Gainesville will place no disproportionate burden or reliance on the facilities of the Corporation and thus should not be penalized either in terms of greater reserve capacity requirement than that carried by the other systems in the coordinating area or in terms of a demand charge."

The Court of Appeals Opinion

The Court of Appeals held that the Federal Power Act conferred power on the Commission to order an interconnection on the application of a municipality, and granted enforcement of that part of the Commission's order. It remanded the case to the Commission "to fix a formula for computing what would be reasonable compensation" to the company, without, however, suggesting a formula to the Commission (425 F.2d 1204). It said, *inter alia* (425 F.2d 1203):

> ". . . the terms of the interconnection do not adequately satisfy the statutory requirements because they do not provide Florida Power with the 'reimbursement reasonably due' it. . . . The interconnection will be of substantial benefit only to the City. Through the interconnection it receives essential emergency back-up, which is a service at all times instantaneously available, and which protects it against the outage of the largest

of its generators. . . . The benefits to Florida Power, however, are largely illusory.

"But, although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection. And this burden will be reflected in their cost-based rates. They are entitled to not have to carry the entire responsibility for providing an extremely valuable service.

"The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation." (Footnotes and citations omitted.)

SUMMARY OF ARGUMENT

I. Nothing in the Federal Power Act authorizes, much less compels, the Commission to inflate the compensation to a utility for an interconnection, which the Commission finds fully covers its cost of service, by an added allowance for the benefits derived by the other party to the connection, nor to equate such benefits inversely to the size of the participants. The Commission's determination of the service that each participant shall render, and its determinations of the compensation reasonably required to cover the cost of that service, are not subject to judicial displacement, as long (as in this case) as the Commission's order does not require the enlargement of generating or transmission facilities, or compel the exchange of

energy when to do so would impair a utility's ability to render adequate service to its customers, or require the larger utility to bear any of the costs of effectuating the interconnection.

II. The Commission's power under section 202(b) to order interconnections, and to fix the terms and conditions thereof, must be read in the light of section 202(a), which states the criteria which govern all such orders. The purpose stated is that of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources. The Commission is directed to promote and encourage such interconnections to effectuate that purpose. The Federal Power Commission's National Power Survey made plain the vital importance to many of the Nation's small publicly owned power systems, both municipals and cooperatives, of interconnection with large regional power pools, in order to obtain the cost advantages of large-scale generating units, and dependability of supply. The lower court's novel interpretation of section 202(b), relating compensation for a large utility's interconnection with a small municipal system to the relative benefits accruing to the two, rather than cost of service, and equating those relative benefits inversely with relative size, would penalize the smaller parties to such arrangements. It would frustrate the policy which the Act declares shall govern the Commission in bringing such interconnections about.

ARGUMENT

I. Under the Federal Power Act, the criterion for compensation to an electric utility is its cost of service, including a reasonable return on the investment, not the benefit derived by the recipient of those services.

1. The company's claim is for phantom services.

At the outset, it should be made clear that the demand of the company is for services which the Commission did not order (the furnishing of firm back-up power), and the compensation that it demands for those uninvited services is for the use of phantom facilities, not required in the services which the Commission in fact ordered.

Florida Power is in error in telling this Court (Brief in Opposition to Gainesville's Petition for Certiorari, p. 10) that the Commission has ordered it to render "emergency backup service" which, according to the company, means:

> "... the furnishing of capacity in a state of readiness capable of supplying instantaneously at any instant of the day or night the energy required to protect against loss of a system's largest generator."

The Commission says that it ordered no such thing. It says (App. 363, n. 4):

> "We emphasize in that particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other."

In a somewhat similar situation, the Court of Appeals for the First Circuit, in sustaining an FPC decision ordering a privately owned utility to intercon-

nect with a municipality, *New England Power Co.* v. *FPC*, 349 F. 2d 258 (C.A. 1, 1965), rejected the utility's demand that the municipality pay for the use of facilities to provide "back-up protection," saying "NEPCO [the utility] has not been ordered to use those facilities, but merely to provide service to Shrewsbury."

The Commission's expertise certainly extends to perception of the meaning of its own order.[6]

The unspoken but essential premise of the opinion below was that the court was persuaded that the company, rather than the Commission, best understood the Commission's order. We think it vital, as interconnections continue to be ordered by the Commission across the land, that the Commission's expertise to make these distinctions between the various kinds of services it orders should be fully recognized. Cf. *Crisp County Power Comm.* v. *Georgia Power Co.*, 42 F.P.C. 1179 (1969).

There is, of course, an infinite variety in the kinds of service that an interconnection agreement may provide for, and hence in the facilities that may fairly be said to be utilized in performing the agreed services. Such agreements may range all the way from simple exchange of off-peak power to agreements to install generating capacity alternately on the two systems, each committing itself to buy firm power and energy from the

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[6] The Commission's construction of the statute that it is administering is entitled to respect; a fortiori, with respect to the interpretation of its own orders. See *SEC* v. *New England Electric System*, 390 U.S. 207, 211 (1968); *SEC* v. *New England Electric System*, 384 U.S. 176, 185 (1966); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965); *Unemployment Commission* v. *Aragon*, 329 U.S. 143, 153 (1946); *NLRB* v. *Hearst Publications*, 322 U.S. 111, 130-31 (1944).

other in amounts which, in effect, obligate each to share the debt service and other fixed charges on each new unit, even if located on another's system. Manifestly, it is a highly complicated technical problem to determine what investments may fairly be identified with the particular interconnection arrangement under review. This is a problem which calls for the exercise of the expertise of the Commission, not of a court. In this case the Commission, based on its Nation-wide experience with interconnection arrangements, had no difficulty whatever in identifying the arrangement that it was ordering as one of the type which does *not* require the participants to dedicate an investment in generating or transmission facilities to firm power service to the other. Consequently, the Commission properly ruled that Florida Power Corporation was quite out of line in demanding that Gainesville pay it an amount equal to the company's fixed charges (said to be $3.08 per kilowatt) on 50,000 kilowatts of capacity in generating and transmission facilities, as though these facilities were dedicated to Gainesville's exclusive service, day and night, whereas, in fact, the Commission—which ought to know what it was ordering done—found the precise opposite (App. 363, n. 4). The court below failed to grasp this, saying of Gainesville (425 F.2d 1203):

> "... Through the interconnection it receives essential emergency backup, which is a service at all times instantaneously available, and which protects it against the outage of the largest of its generators."

In these circumstances, Florida Power is really demanding payment for a phantom 50,000 kw of dedicated facilities. It seems to wobble between two justifica-

tions for this baksheesh: (1) that it is dedicating an investment on its own system in this amount, (2) that Gainesville, solely because its system is relatively small, is getting a benefit from interconnection with its big neighbor, which it ought to share.

As to the first ground, the phantom requires no nourishment.

As to the second, as we shall see, no utility is entitled to compensation in excess of its cost of service, no matter what benefit the purchaser of those services derives from them.

2. The decision made in this case will control the Commission in its determination of wholesale rates under section 206(a), a responsibility at least as broad as that which it exercises with respect to interconnections under section 202(b).

The Federal Power Commission determines the compensation due an electric utility for its services under two sections of the Federal Power Act, section 202(b) (16 U.S.C. 824a(b)), and section 206(a) (16 U.S.C. 824e(a)).

The standard for determination of compensation under section 202(b) is "compensation or reimbursement reasonably due." Such compensation, in the nature of things, has two elements: (i) the "apportionment of cost" of physically effectuating the interconnection (an issue not litigated here because the Commission allocated the entire cost to the municipality, which is willing to pay these costs), and (ii) the terms of service under which each party shall "sell energy or exchange energy," and the rates and charges for such services, in the functioning of the interconnection after it is physically effectuated.

The second element of the determination is indistinguishable from that which the Commission must make under section 206(a). Section 205(a) requires that all "rates and charges" in connection with "transmission or sale of electric energy" subject to the Commission's jurisdiction "shall be just and reasonable." Section 206(a) authorizes the Commission, on complaint or on its own order, to determine the "just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force."

The Commission's order in a section 202(b) interconnection proceeding, other than the portions describing the physical interconnection to be made, is, for all practical purposes, an application of the same criteria as those which sections 205(a) and 206(a) impose.

As noted below, it is settled that the Federal Power Act requires that compensation to a utility for its services, both under an interconnection agreement reviewed by the Commission pursuant to section 202(b), and under a rate established pursuant to section 206(a), be sufficient, but no more than sufficient, to pay the utility its cost of service, including an allowance for a reasonable return on the investment in the facilities required to supply the services ordered. In neither instance is there authority to increase a rate so founded, in order to recapture a part of the benefit derived by the customer. A decision to the contrary would shatter the Commission's established criteria for the determination of rates at wholesale under section 206(a) as well as its criteria for determination of compensation for interconnections under section 202(b).

We believe it well established that the determination of the elements of compensation, and their amounts,

required to fully compensate a utility for its cost of service, is within the exclusive competence of the Federal Power Commission.[7] When that determination is supported by substantial evidence, it is conclusive. Section 313(b), 16 U.S.C. 825*l* (b). To affirm the lower court's decision would require the breach of this statutory limit on the power of judicial review.

3. The interconnection decisions under section 202(b) give no support to the company's claim for compensation in addition to its cost of service.

Section 202(b), involved here, authorizes the Commission to direct a public utility (if it finds that no undue burden will be placed upon such public utility) to establish physical connection of its transmission facilities with those of one or more other persons engaged in the transmission or sale of electric energy, and to sell energy or exchange energy with such persons. The section goes on to say that the Commission shall have no power to compel the enlargement of generating facilities for such purposes, nor to compel a public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission is authorized to "prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

There is no doubt that the Commission's order in this case complies with all facets of this section, except for the controversy about compensation. It has

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[7] *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

found that no undue burden will be placed on Florida Power (App. 357). To assure this, it has required Gainesville to maintain exactly the same margin of reserves on its own system that Florida Power and other members of the Florida Power Pool must maintain on theirs (App. 360, 376). It has required Gainesville to reimburse Florida Power for frequency regulation (App. 362, 378). It has required Gainesville to participate with Florida Power in a coordination committee (App. 362). It has made clear that "in this particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other" (App. 363, n. 4). Of course, therefore, the Commission is not compelling Florida Power to enlarge its generating facilities for the purpose of this exchange, and is not compelling Florida Power to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission took special note of these statutory prohibitions, and of its compliance (App. 356-57, 375), and said: "The reserve capacity that we are requiring Gainesville to maintain will assure that Gainesville does not unduly burden Florida Power" (App. 363). As to apportionment of costs of the physical interconnection, Gainesville will bear all of them, of the order of $3,000,000 (App. 361, 368, 375). As to compensation, the Commission sets a schedule of power and energy charges to apply to scheduled flows (App. 376-78), and no one complains of it. As to non-scheduled or inadvertent flows (which is all there is left to argue about), the Commission says that "These flows will be instantaneous and occur as generating sources and connected electric loads shift. Depending upon the originating cause they may be in the direction of Florida Power or in the direction of

Gainesville" (App. 359), and the Commission sets rates for payment for the power and energy so flowing (App. 377-78).

The sole question, therefore, is whether these rates, set by the Commission, which fully recover cost of service (App. 363), including a reasonable return on the investment, should be inflated to include an added charge to reflect the benefit that Gainesville will derive, as an interconnected utility, from the consequence of not needing to invest as much money in reserve generating capacity as it would be required to do if it continued to operate in isolation.

On this, the Commission correctly says (App. 360, n. 3), "Florida Power does not assess a similar charge against any other system with which it interconnects, nor does any other member of the Florida Operating Committee. Indeed, the staff's review of pooling agreements and bilateral arrangements between large and small systems described in the record did not reveal any other example of such a charge." [8]

In short, there is no precedent, in any section 202 interconnection proceeding, for the novel "sharing of benefits" criterion of rate-making proposed here, and nothing in the Act suggests such a criterion.

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[8] The notion that a smaller party to an interconnection should pay the larger for a "benefit" in addition to compensation for cost of service apparently did not occur to Florida Power Corporation when it joined the Florida Power Pool. In that pool, it has a much larger partner, Florida Power and Light Company. According to the Federal Power Commission in "Statistics of Privately Owned Electric Utilities in the United States for the year ended Dec. 31, 1968," p. 603, Florida Power and Light Company's installed capacity is about 2½ times that of Florida Power Corporation: 4,331,940 kw compared to 1,669,400 kw. But no "standby" charges are paid by Florida Power Corporation.

To the contrary, where, as here, the interconnection arrangement does not require either party to maintain reserve capacity for the accommodation of the other, the practice of the industry, and that of the FPC, is not to assess interconnection charges for a non-existent burden. See *Crisp County Power Commission* v. *Georgia Power Company*, 42 F.P.C. 1179, 1189, 1195-96 (1969).

In *New England Power Co.* v. *FPC*, 349 F. 2d 258 (C.A. 1, 1965), in ordering an interconnection between a private utility and a municipality, the Commission rejected the company's demand for compensation for facilities not required to be used in providing the service ordered (a situation analogous to the one before the Court), and, impliedly at least, equated compensation with cost of the ordered service.

In *South Carolina Generating Co.*, 16 F.P.C. 52 (1956), a utility asked approval of a rate contract with another utility for the sale of a portion of its generating capacity where the charge exceeded the costs by one-half of the difference between the seller's costs and those which the purchaser would have incurred if it had constructed its own plant. This proposal bears a family resemblance to Florida Power Corporation's proposal here. The Commission reduced the proposed charge. It held that the reasonableness of the rate should be determined by cost of service, not by the value of service to the purchaser. It added that a value of service rate would be a "radical departure from established ratemaking principles utilized by this Commission in the regulation of public utility rates in the electric industry where there is a clearly ascertainable cost of service." 16 F.P.C. 52, 57.

The Commission added (pp. 57-58):

> "... We wish to make it expressly clear that our decision is based upon a rejection of the applica-

tion of the value-of-service formula to the rate for the sale of electric energy to Georgia Power Co. Of course, we are not bound to use one formula in our determination. We have heretofore consistently found, with court approval, that the cost-of-service formula is the one best adapted in determining just and reasonable rates in this industry where all costs are known or clearly determinable.

"The value-of-service approach advocated by Generating Co. would result in a chaotic structure based in part upon the cost to the buyer of supplying substitute power. Such 'regulation' would, in fact, be no regulation at all and would completely disregard the public interest and the ultimate consumer which the act is designed to protect. *Cf. Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672. *Mississippi River Fuel Corp.* v. *Federal Power Commission,* 121 F. 2d 159 (C. A. 8, 1941)."

On review, the Court of Appeals in *South Carolina Generating Co.* v. *FPC,* 249 F. 2d 755 (C.A. 4, 1957), remanded the case to the Commission on other grounds. But it affirmed the Commission's rejection of the value of service standard in fixing rates. The court said that the Commission was justified in lowering the rate and fixing a new rate based on the cost of service in accordance with the orthodox methods of rate-making in utility cases. 249 F. 2d 755, 759-62.

In *Public Service Co. of Oklahoma,* 25 F.P.C. 656, 662 (1961), the Commission disapproved an Examiner's "value of service" concept of rate-making, saying:

"... We disapproved such a 'what the traffic will bear' theory in *South Carolina Generating Co.* (Opinion No. 297), 16 F.P.C. 52 (1956)."

The Commission approved rates which, it said,

"... will not produce revenues in excess of Company's cost-of-service including an allowance of no

more than a fair return on its net investment in facilities used to provide the services and are therefore just and reasonable." (p. 662.)

4. The wholesale rate cases lend the company no support.

As we have noted, section 205(a) of the Federal Power Act requires that all rates and charges by any public utility in connection with the transmission or sale of electric energy shall be "just and reasonable." Section 206(a) authorizes the Commission, after a hearing, and upon its own motion or upon complaint, to find (among other things) that any rate, charge or classification is unreasonable, and to "determine the just and reasonable rate, charge, classification, rule, regulation, practice or contract to be thereafter observed and in force. . . ."

In the administration of those sections, the Commission's decisions, and those of the reviewing courts, have uniformly and exclusively restricted rates to a level not exceeding cost of service, including, of course (as here), a reasonable return on the investment.

See *South Carolina Generating Co.* v. *FPC,* 261 F. 2d 915 (C.A. 4, 1958); *Safe Harbor Water Power Corp.* v. *FPC,* 179 F. 2d 179 (C.A. 3, 1949), *cert. denied* 339 U.S. 957 (1950); *Georgia Power Co.* v. *FPC,* 373 F. 2d 485 (C.A. 5, 1967); *Otter Tail Power Co.* v. *FPC, et al.,* 429 F. 2d 232 (C.A. 8, 1970).

Indeed, still lower rates have been sustained when established by contract. *FPC* v. *Sierra Pacific Power Co.,* 350 U.S. 348 (1956); *St. Michaels Utility Comm.* v. *FPC,* 377 F. 2d 912 (C.A. 4, 1967).

If, as seems clear, the cost of service criterion sets a ceiling on rates when the larger utility is selling

power to a smaller one which owns no generating capacity whatever (this is the typical section 206(a) case), why should the smaller one be penalized if, and only because, it owns generating equipment? The court below seemed to recognize this, but missed its significance. It said, in response to a jurisdictional objection of the company, that, after examining the legislative history, " . . . we can find no support for the conclusion that municipalities which generate their own power were to be treated differently from non-generating municipalities concerning anything other than 'wheeling'." 425 F. 2d at 1202-03 (App. 501). If this is true with respect to the Commission's jurisdiction, strong evidence would be needed to show that different substantive treatment of the two classes of municipalities was intended by Congress with respect to the criteria controlling the bills that they must pay for power services. There is none.

5. The natural gas rate cases are in conflict with the opinion below.

Both sides in this controversy refer to decisions of the Commission and the courts in cases involving the determination, under the Natural Gas Act (15 U.S.C. 717, et seq.) of rates charged by producers of natural gas. That Act and the Federal Power Act contain parallel provisions with respect to rate standards.[9] There are, of course, notable differences in the problems presented in the regulation of rates in the gas and electric industries. For example, the life of a

[9] Compare section 205 of the Federal Power Act (16 U.S.C. 824d) with section 4 of the Natural Gas Act (15 U.S.C. 717c), and section 206(a) of the Federal Power Act (16 U.S.C. 824e(a)) with section 5 of the Natural Gas Act (15 U.S.C. 717d(a)). The two Acts are frequently construed in parallel.

natural gas field may be assumed to be 20 years or less; the producer is not assured a monopoly; he can withdraw from service; his is a high-risk venture which, it is argued, must offer extraordinary inducements to the investor, and his industry is in competition with other sources of fuel, the costs of which fluctuate. Yet, despite these differences, it is notable that the Commission and the courts, in passing on the propriety of prices for natural gas, have been most reluctant to stray from the guide line of the seller's costs plus a reasonable return on his investment, and in no case, so far as we have discovered, has any decision sanctioned the fixing of gas prices on the basis of benefit to the consumer, rather than cost of the seller's services. The "interest of the consumer," and his right to "just and reasonable rates," appear dominant. Cf. *UGI* v. *Callery Properties,* 382 U.S. 223 (1965); *FPC* v. *Sunray DX Oil Co., et al.,* 391 U.S. 9 (1968). The cases recognize that the Commission must examine the seller's cost of service because the purchaser, who can pass costs along to the consumer, lacks "sufficient incentive to bargain prices down" (391 U.S. at 25-26). The "in line" price range has been related to "determined costs," plus a rate of return deemed high enough to constitute the necessary inducement. See *Bel Oil Corp.* v. *FPC,* 255 F. 2d 548 (C.A. 5, 1958), *cert. denied* 358 U.S. 804 (1958); *City of Detroit* v. *FPC,* 230 F. 2d 810 (C.A. D.C., 1955); *Forest Oil Corp.* v. *FPC,* 263 F. 2d 622 (C.A. 5, 1959); *Atlantic Refining Co.* v. *PSC of New York,* 360 U.S. 378 (1959); *UGI* v. *FPC,* 283 F. 2d 817 (C.A. 9, 1960); *PSC of New York* v. *FPC,* 287 F. 2d 146 (C.A. D.C., 1960); *UGI* v. *FPC,* 287 F. 2d 159 (C.A. 10, 1961); *UGI* v. *FPC,* 290 F. 2d 133 (C.A. 5, 1961), *cert. denied* 368 U.S. 823 (1961). See also *Area Rate Proceedings (Southern Louisiana*

Area), F.P.C. Opinion 546, 40 F.P.C. 530, 636, et seq. (1968).

In *Natural Gas Pipeline Co.* v. *FPC,* 120 F.2d 625 (C.A. 7, 1941), the Commission had fixed a gas price related to cost of service. It refused to include in the rate base an item for going value. It also rejected the company's contention that the price should be determined by the market. The Court of Appeals remanded, with directions to include going concern value in the rate base. But with respect to the company's contention that "reasonableness of rates is determined 'not by what profit it is reasonable to make, but what is reasonable to charge for the services rendered'," the court said (p. 633):

> "We reject, without extended discussion, the contentions (a) and (b). They ignore the well-established holdings, backed by reason and experience, to the effect that a fair rate of return, on a fairly established rate base, supplies the correct test of reasonableness. The value of the service to users is neither a reasonable rule, nor supported by judicial decisions.
>
> "This seems too elementary to require elaboration or supporting argument."

The Supreme Court (315 U.S. 575 (1942)) reversed the holding that going value must be included in the rate base (sustaining the Commission on this issue), but did not disturb the holding of the court (and Commission) with respect to "value of the service to users."

In *Mississippi River Fuel Corporation* v. *FPC,* 121 F.2d 159, 164 (C.A. 8, 1941), the court, in sustaining an order of the Commission in a gas price case,

said: " . . . The value of the service to users is neither a reasonable rule nor supported by judicial decisions."

Inasmuch as the parallel provisions of the Federal Power Act and the Natural Gas Act, in the past, have been subject to the same rules of construction, a new interpretation of the terms "compensation or reimbursement reasonably due," in section 202(b) of the Federal Power Act, equated with "just and reasonable" rates and charges in section 205(a) of that Act, as meaning the seller's cost of service (including reasonable return on his investment) *plus* half of the buyer's benefit, would create an intolerable dichotomy with the adjudicated meaning of the same words "just and reasonable" in section 4 of the Natural Gas Act (15 U.S.C. 717c).

II. The statutory purpose of "assuring an abundant supply of electric energy throughout the United States with the greatest possible economy with regard to the proper utilization and conservation of natural resources," by means of interconnections, would be paralyzed if the consumers served by small utilities were penalized as the company proposes in this case.

The purpose stated by section 202(a) is that of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources. The Commission is directed to promote and encourage such interconnections to effectuate that purpose. The Federal Power Commission's National Power Survey (1964) made plain the vital importance to many of the Nation's small consumer owned power systems, both municipals and

cooperatives, of interconnection with large regional power pools, in order to obtain the cost advantages of large-scale generating units, and dependability of supply. The lower court's novel interpretation of section 202(b), relating compensation for a large utility's interconnection with a small municipal system to the relative benefits accruing to the two, rather than cost of service, and equating those relative benefits inversely with relative size, would penalize the smaller parties to such arrangements.

On the rationale of the court below, (1) an isolated utility which becomes a member of a power pool, particularly a small utility, always has greater need for the interconnection than the pool has need for the newcomer's relatively small generating capacity; (2) the benefits in terms of immediate savings resulting from the interconnection are therefore larger to the newcomer than to the pool members; (3) the newcomer must, therefore, always owe a share of these savings to the pool as economic rent, "economic penalties for being the last one on the interconnected network" as the Commission called it in rejecting this conclusion (App. 358).

As the FPC said in *Crisp County Power Commission* v. *Georgia Power Company*, 42 F.P.C. 1179, 1187 (1960):

> "... The ever-widening gap that technology has created between large interconnected systems and isolated systems, in the economical use of capital and the efficient production of energy, threatens the survival of many small systems. Unless isolated systems can enter into coordination agreements with their larger interconnected neighbors, their outlook appears bleak, indeed."

Their outlook will be bleaker still if the ruling below becomes law.

As the Commission pointed out (App. 365):

> "... the specific type of demand charge requested by Florida Power, namely, the imposition of a charge based upon the size of Gainesville's largest generating unit, would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units."

The same would be true no matter how artfully the "economic penalty" might be phrased. What is at stake here is not the validity of the particular type of economic penalty demanded, but the lawfulness of *any* scheme which would enable a seller of electricity, compensated for all of its cost of service, to pad its charges by an amount equal to a share of the benefits received from those services by the buyer thereof. On this, the Commission was right, as a matter of law as well as of policy, and the lower court was wrong on both.

The predicament of the small power systems of the United States was eloquently stated in the National Power Survey of the Federal Power Commission in 1964. The Commission said (p. 267):

> "The small systems[10] in the electric power industry are understandably concerned about their future welfare as elements of the complex industry structure which serves America's electric consum-

[10] Our footnote. The Commission defined "small systems" as those having annual energy production requirements of less than 100 million kilowatt hours, which, at an assumed annual load factor of 45 percent, it equated with peak load requirements of 25,000 kilowatts or less (p. 267).

ers. They fear that the growing emphasis on the economies of scale in generation and transmission will reduce their opportunities for the orderly expansion of their own generating capacity, and perhaps even threaten their survival.

"The interests of the small systems are a matter of vital concern in this National Power Survey. Small systems must recognize the need for obtaining their power supply from low cost sources and there must be opportunity for them to do so. Participation of the small systems in the benefits of coordination and a continuous search for means of broadening this participation are fundamental if these systems are to continue to provide low cost power to their consumers and make the most efficient use of our fuel and capital resources. Reduction in the costs of generation of the larger systems through more extensive adoption of the concepts discussed in the Survey can and must provide attractive sources of power for the use of the small systems, rather than serve as a threat to their existence."

Not long after that report (1964), the Northeast Blackout (1966) added emphasis, if any was needed, to the wisdom of the policy of integration declared 30 years earlier in section 202(a) of the Federal Power Act. The industry and the Commission have moved mightily in the last few years to carry out that policy. As the Commission said in the instant case (App. 359, n. 2), some 94 percent of the total installed generating capacity of the Nation's electric utilities is interconnected and operates in electric synchronism.

But the Nation's smaller publicly owned systems and cooperatives, not yet interconnected with the giant systems which adjoin them, are at an economic disadvantage, because of the enormous strides which

the industry has made in reducing costs by installation of larger generating units, too large and expensive for a small municipality to afford.

The Federal Power Commission reports[11] that at the end of 1968 there were 140 fossil-fueled plants of 500,000 kw and larger in service in the United States, the largest of which had the unprecedented capacity of 2,175,000 kw. 151 new fossil-fueled units of 300,000 kilowatts or larger, with a total capacity of 88,000,000 kilowatts (equal to more than 40 Hoover Dams) are scheduled for operation between 1969 and 1975. Seven-eighths of this capacity will be in units of 500,000 kilowatts or larger. This trend toward greater size is dramatically illustrated by comparison of statistics for 1948 and 1968.[12] In 1948, the 53 new units reported averaged 41,000 kilowatts each. In 1968, the 43 new units reported averaged 414,000 kilowatts each. All of these figures are in addition to the statistics for nuclear-powered plants.[13] These include 80 units in 58 plants that are expected to go into operation between 1969 and 1977, varying in size between 450,000 and 1,175,000 kilowatts each.

The effect of increase in size is a dramatic reduction in costs per kilowatt of capacity, and per kilowatt hour of energy.

The National Power Survey of the Federal Power Commission (1964) stated, as a feasible target, that a reduction can be expected in the Nation-wide aver-

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[11] FPC, Steam-Electric Plant Construction Costs and Annual Production Expenses, Twenty-first Annual Supplement, 1968, p. x.

[12] *Id.*, p. ix.

[13] *Id.*

age price per kilowatt hour from about 1.7 cents in 1963 to about 1.2 cents in 1980, a reduction of 27 percent (p. 277). But these are averages. They do not disclose the disparity between the high costs incurred by a small municipality or cooperative generating power with units of, say, 10,000 kilowatts of capacity each (Gainesville's largest is 50,000), and those incurred by a utility able to afford new generating plants with units of 500,000 kilowatts each.

The Federal Power Commission's National Power Survey showed an acute awareness of this, and of the necessity for effective enforcement of the interconnection authority of section 202(b) to bring the benefits of low-cost power to the consumers served by small utilities (p. 274). That report's discussion of the predicament of small power systems ended on a note which we think can appropriately bring this argument to its close (p. 275):

> "Psychological barriers also stand in the way of full coordination between the small municipal and cooperative systems and the investor-owned systems. These barriers are the fruit of decades of intra-industry animosities, and they impair many opportunities for small system improvement. Because of their distrust the municipalities and cooperatives are often hesitant to sacrifice any of their autonomy by purchasing power from investor-owned systems or engaging in joint projects with them regardless of the prospect of large economies.
>
> "Overcoming these barriers is an important goal for the entire industry, but it will not be easy to attain. Determined and resourceful leadership in all branches of the industry will be required. The Federal Power Commission is attempting to contribute to the elimination of these obstacles by

the effective and impartial regulation of wholesale electric rates and the terms and conditions of service for transactions in interstate commerce.

"Where economic strength alone determines bargaining power, the small systems may be at a great disadvantage, but where regulation is effective, long-term wholesale relationships can be built firmly on a foundation of legally-enforced rights and responsibilities. With such a foundation the parties are enabled to reach the most economic solution to the problem of power supply under the particular circumstances of each case."

CONCLUSION

The judgment of the Court of Appeals should be reversed, and the case remanded to that court with instructions to affirm the opinion and order of the Federal Power Commission.

Respectfully submitted,

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December 24, 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 464 and 469

GAINESVILLE UTILITIES DEPARTMENT,
CITY OF GAINESVILLE,
Petitioners,

v.

FLORIDA POWER CORPORATION,
Respondent.

FEDERAL POWER COMMISSION,
Petitioner,

v.

FLORIDA POWER CORPORATION,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR FLORIDA POWER CORPORATION

QUESTION PRESENTED

Respondent respectfully submits the question presented, properly stated, is:

Whether the Federal Power Commission, in ordering a forced connection of electric systems under Section 202(b)

of the Federal Power Act, must provide some formula for reasonable compensation to Florida Power Corporation for supplying the City of Gainesville with extremely valuable emergency backup (standby) service.

In Gainesville's Brief in Case No. 464, the question presented is stated to be whether the Federal Power Commission erred in not including in the compensation "an allowance for net benefits received by the smaller system [Gainesville] as a result of the interconnection, in addition to reimbursement for costs incurred by the large system [Florida Power]." This misstates the question because the Court of Appeals did not hold there must be an allowance for net benefits in addition to reimbursement for costs. The Court of Appeals denied enforcement of the Federal Power Commission's Order "insofar as no provision for the reasonable compensation of Florida Power is made." The Court left to the discretion of the Commission whether compensation should be based upon splitting benefits (proposed by the Presiding Examiner) as a possible alternative but not in addition to sharing costs (proposed by Florida Power).

In Federal Power Commission's Brief in Case No. 469, the question presented is stated to be whether the Federal Power Commission properly conditioned the interconnection upon compensation terms based on the relative burdens that each places on the interconnected network. This misstates the case because the Commission did not base compensation terms solely on relative burdens. The Commission prescribed compensation, based upon either a sharing of benefits, return of the service in kind or the seller's cost plus 10%, for every conceivable service across the connection except emergency backup service, which Gaines-

ville's attorney stated to be the "number one" kind of service Gainesville is asking for.[1] See paragraphs (7) (b), (d), (e), (f), (g) and (8) of the Commission's Order (App. 376-8). Only in the case of emergency backup service, Gainesville's "number one" requirement, did the Commission cite relative burdens as a reason for denying compensation.

STATEMENT OF THE CASE

While this case was begun by Gainesville filing an Application with the Commission for a forced connection under Section 202(b) of the Federal Power Act, the point at issue has not been and is not whether Florida Power should or will make available to Gainesville the advantages of an interconnection. As a part of its direct case in response to the Application, Florida Power voluntarily offered a connection to Gainesville by filing a Proposed Contract for Interconnection and Electric Service (See Exhibit 40, pp. 5a to 25a of the Appendix to this Brief). This Contract submitted by Florida Power offered Gainesville every conceivable service it requested on substantially the same terms as ordered by the Commission with the exception of compensation for emergency backup service which Gainesville and the Commission insist should be at Florida Power's sole expense. Throughout the proceeding, Florida Power has continued to offer Gainesville this voluntary connection.

Florida Power's opposition to a forced connection under Section 202(b) of the Federal Power Act has been and is to protect itself and its customers from and against man-

[1] Mr. Spiegel stated in oral argument before the Commission: "What kind of service are we asking for and what should we pay for it? We are asking, number one, we can live without everything else, but number one, we are asking for emergency backup service." See page 2a of Appendix to this Brief.

datory terms and conditions which (i) are not in the public interest insofar as the large public served by Florida Power is concerned and (ii) place an undue burden upon Florida Power and the large public served by it.

In order to place the question presented and area of disagreement in proper perspective, it is necessary to supplement Petitioners' Statements of the Case by pointing out the real and significant facts.

A most significant and inescapable fact is the great disparity in the capabilities of the electrical resources of Florida Power and Gainesville. Annual load growth on the Florida Power system is projected at almost twice Gainesville's 1966 peak load of 58.8 mw[2] and in excess of Gainesville's projected 1970 peak load of 102 mw.[3] Florida Power must provide on its system each year additional generation and transmission to serve annual load growth greater than Gainesville's entire load. Hence disparity in size and capabilities of electrical resources is a continuing and increasing reality.

Gainesville's generating capability of 138.4 mw is provided by units rated at 50 mw, 24 mw, 16.5 mw, 12.6 mw, 5 mw, 1 mw and two 15 mw gas turbines. Contrary to a representation in Gainesville's Petition for a Writ of Certiorari, Gainesville does not own any transmission facilities and has never proposed constructing any transmission facilities, except a 115 kv[4] loop around the City for in-

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[2] A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

[3] See Exhibit 34, which is reproduced on page 4a of the Appendix to this Brief and was introduced in evidence at R. 967.

[4] A kilovolt (kv) is a large unit of electrical voltage and a term used in rating transmission lines. Generally speaking, depending upon the size of the conductor, a 230 kv line has a capacity of approximately 350 mw, a 115 kv line has a capacity of approximately 125 mw, and a 69 kv line has a capacity of approximately 50 mw.

ternal use only and 7 miles of 115 kv line to connect this loop with Florida Power's backbone transmission network.

Florida Power's generation for the most part is provided by units rated at 527 mw, 404 mw, 232 mw, 125 mw, 125 mw, 88 mw, 84 mw, 80 mw.[5] Gainesville's largest 50 mw generator is about the equivalent of units which on the Florida Power system "are used only to meet peak load conditions and frequently are placed on cold shutdown" (App. 92-3, 156-7).

Florida Power's electric system includes a large backbone transmission network which, as of December 31, 1965, contained 410 miles of 230 kv lines, 1156 miles of 115 kv lines and 1409 miles of 69 kv lines, exclusive of radial (as distingushed from through transmission) lines. Exhibit 32 is a map of this transmission network.[6] Through this backbone transmission network, Florida Power is interconnected with the other four major electric systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Company, Orlanda Utilities Commission and Jacksonville Electric Authority),[7] and with Georgia Power Company and Gulf Power Company. In 1970 Florida Power's backbone transmission network had a depreciated value of about $65 million with annual fixed charges and operating costs of about $13 million (App. 157-9, 192). A primary function (estimated at 60%) of Florida Power's backbone transmission network is furnishing system reliability by protecting against loss of a power source by delivering reserve (emergency) power to any point on the system where reserves are required.

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[5] Florida Power is constructing a nuclear fueled 875 mw unit scheduled for service in 1972.

[6] See Exhibit 32 in Appendix Exhibit Volume. This Exhibit was introduced in evidence at R. 967.

[7] These four systems in 1965 had a combined installed net plant generating capability of 5837 mw (Exhibit 4, Schedule 3, Sheet 3, introduced in evidence at R. 278).

Gainesville in its testimony and Exhibit 3 proposes to tap Florida Power's backbone transmission network by constructing about 7 miles of 115 kv transmisson line at an estimated cost of $1.5 million.[8] Statements in Petitioners' Briefs that Gainesville will spend $3 million on transmission for a connection with Florida Power result from an erroneous finding of the Commssion which is not supported by any evidence[9] and was totally refuted by the testimony. Mr. Ebaugh, the design engineer for the Gainesville system, did say on cross-examination that to interconnect Gainesville's generating plant to Florida Power's system would be double the $1.5 million figure (App. 41). Mr. Ebaugh explained that the second $1.5 million was the estimated cost of transmission and other facilities Gainesville will need whether or not there is a connection. He said, "it was for that reason that we didn't feel that they [facilities costing the second $1.5 million] should be charged against a possible intertie" (App. 41-2). The error in the $3 million figure has significance because typical of the obfuscation of the facts seemingly to create the impression Gainesville will make a substantial contribution to a connection with Florida Power and to mitigate the obvious gross inequities of the Commisson's Order.

Whatever the cost of the connection, it is unarguably clear from Gainesville's witnesses and attorney that the principal and underlying reason for the connection is to

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[8] See Table 3 in Exhibit 3 reproduced in Appendix Exhibit Volume and introduced in evidence at R. 82. The Commission's Order specifies "The facilities shall be substantially as described in Exhibit 3, modified as necessary for a minimum of 60 mva capacity" (App. 376). The modification ordered by the Commission would cost "under $50,000" (App. 39).

[9] Commission staff witnesses in their study of financial savings to Gainesville (see ft. 10, *infra*) used $1,553,000 as the cost of the connection (Exhibit 81 in Appendix Exhibit Volume was introduced in evidence at R. 1148).

obtain for Gainesville emergency backup service from Florida Power's backbone transmission network:

(1) Gainesville's principal witness, Mr. Benson, a consulting engineer formerly on the Staff of the Federal Power Commission, in his prepared direct testimony, testified: "Gainesville needs and wants the Commission to direct Florida Power . . . to supply emergency backup service to Gainesville in the magnitude of Gainesville's largest generating unit or the capacity of the interconnection, whichever is smaller" (App. 64-5).

(2) Mr. Ebaugh, the consulting engineer who since 1952 has designed the Gainesville system, explained that emergency backup service from Florida Power should eliminate the possibility of any generating deficiency on the Gainesville system (App. 36-38).

(3) Mr. Kelly, manager of the Gainesville system, testified that the connection would provide Gainesville with instantaneous emergency backup service at least equal to the load on its largest 50 mw generator (App. 53-55).

(4) Gainesville's attorney Mr. Spiegel stated: "We are asking number one, we can live without everything else, but number one, we are asking for emergency backup service" (see page 2a of Appendix to this Brief).

Emergency backup service is furnishing the facilities, in this case a $65 million backbone transmission network, capable of supplying instantaneously at any instant of the day or night the power required to protect against loss of a system's largest generator. Emergency backup service may fairly be likened to a fire department since it represents equipment in a continuous state of readiness to meet any generating deficiency. The reserve capacity supplied by emergency backup service must be instantaneously

available, or the system will suffer a frequency disturbance which can cascade, trip out other generating units, and shut down the entire system (App. 168, 243-4). On page 14 of its Brief in case No. 469, the Commission acknowledges, "If such reserve capacity is not immediately available when needed, a blackout or brownout may be precipitated."

Gainesville's principal witness, Mr. Benson, valued emergency backup service to Gainesville at $520,000 a year.[10] This is the annual financial saving to Gainesville from a reduction in its installed reserve of generation made possible by Gainesville relying upon Florida Power's transmission facilities for emergency backup service (App. 74-5, 105-6). The $520,000 a year represents Gainesville's net annual savings after recovering its costs in making the connection. These savings are the difference between the annual fixed charges on $6.7 million of generation eliminated by the connection less the annual fixed charges on $1.5 million of transmission constructed to tap Florida Power's backbone transmission network.

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[10] The Court of Appeals' opinion in footnote 8 states Florida Power witnesses estimated these savings at $520,000 a year. This $520,000 figure is that of Gaineville's principal witness, Mr. Benson. Florida Power witnesses did not attempt to estimate Gainesville's savings. Commission staff witnesses submitted a study showing Gainesville would realize investment and operating savings averaging about $231,000 a year (see Exhibit 81 in Appendix Exhibit Volume, which was introduced in evidence at R. 1148). This study used Mr. Benson's 8% of investment cost as the annual cost to Gainesville of transmission but used 6½% (rather than Mr. Benson's 10%) of investment cost as the annual cost to Gainesville of generation. Mr. Benson was authorized to speak for Gainesville (App. 52). If Mr. Benson's figure of 10% of investment cost had been used as the annual cost to Gainesville of generation, the study of Commission witnesses would show savings to Gainesville of about $408,000 a year. In addition, this study was based upon theoretical expansion plans which Gainesville had never even considered and which Commission staff witness Braitman testified Gainesville would not adopt if it made full use of the connection (App. 258).

The evidence established irrefutably, and Gainesville witnesses agreed, in the event of any loss of generation on the Gainesville system, power unavoidably and instantaneously will be supplied from Florida Power's transmission facilities to Gainesville in the amount of its requirements for emergency service (App. 53-55, 84, 165-6, 186-8). Without such emergency backup service from Florida Power, Gainesville is incapable of supplying its needs for instantaneous emergency electric service and must rely upon cutting off service to its customers to the extent of any generating deficiency on its system (App. 37-8, 204).[11] With such emergency backup service from Florida Power, there is no reason ever to have any generating deficiency on the Gainesville system (App. 37-8).

The evidence established irrefutably that emergency backup service will be a one way service from Florida Power to Gainesville (App. 173-5, 187). Florida Power must provide on its system through its backbone transmission network emergency power instantaneously available to withstand generating outages of 400 mw or more. As explained by the Presiding Examiner and by the Court of Appeals, emergency backup service from Gainesville to Florida Power is utterly meaningless because the City's three largest generators "at best" can supply an inadvertent or instantaneous energy transfer of only 6 mw, 3 mw and 2.5 mw. These small amounts are too insignificant for Florida Power to take into account in the planning and operation of its system because less than the hour to hour deviations between Florida Power's actual and scheduled production and less than the 30 to 40 mw margin of error which Florida Power allows in calculating its hourly requirements for spinning reserve (App. 323). Staff witness

[11] In the first paragraph on page 5 of the Commission's Brief in Case No. 469, it is admitted that while Gainesville can provide on its system spinning reserve to meet load variations, it can not provide the reserves needed to protect against loss of generation.

Braitman admitted Gainesville's ability to furnish instantaneous emergency service is so limited that following interconnection it would be "inadvisable" in operating the Gainesville system even to attempt to protect against loss of its largest generator (App. 255-6).

The Presiding Examiner is an expert in this technical and complex field, who heard the testimony and observed the witnesses. He found all of the facts to be as hereinabove set forth with the one exception that the annual savings to Gainesville would be "approximately $300,000" (App. 313-41). This finding as to savings was probably a compromise between the $520,000 estimate of Gainesville witness Benson and the $231,000 miscalculation of Commission staff witnesses. As noted in footnote 10 on page 8 of this Brief, the $231,000 figure of Commission staff witnesses resulted from an error in arithmetic and was based on the false premise that Gainesville would install generation in accordance with a plan which staff witness Braitman said it would not.

The Presiding Examiner found, among other things, "the fact of the matter is that . . . the Company . . . will at all times operate its system so as to have spinning capacity equal to the size of Gainesville's largest unit instantaneously available for delivery to Gainesville from any point on its system via its own transmission network; . . . and will give Gainesville's system a reliability of bulk power supply which it could not previously achieve in that it will be able to withstand a loss of generation up to 75 mw without interruption of service" (App. 331-2).

Because Gainesville at all times will be relying upon Florida Power's transmission facilities for a minimum[12]

[12] Actually Gainesville will receive instantaneous emergency backup service of 60 mw, the capacity of the connection, rather than 50 mw, the capacity of its largest generator. During an emergency the connection by overloading may supply even more than 60 mw (App. 412).

of 50 mw of emergency backup service (whether or not energy is being transferred) to the same extent as will Florida Power for its much larger requirements and because emergency backup service will be a one way service totally lacking in mutuality or reciprocity, Florida Power proposed Gainesville pay its fairly allocated share of the cost of owning and operating Florida Power's backbone transmission network. Based upon 1970 load projections, Gainesville's fairly allocated share of the cost was computed to be $3.08 per kw per year times the 50 mw which Gainesville "needs and wants" and which is Gainesville's "number one" requirement. The charge would total about $154,000 a year (App. 194) and is proposed until Gainesville installs electrical resources which provide some mutuality or parity in services and benefits (App. 175, 196). The cost to Gainesville of this share of Florida Power's costs would be far less than the financial savings of $520,000 a year which Gainesville, according to its principal witness Mr. Benson, will derive from emergency backup service (App. 49, 75-6, 105-6).

The Presiding Examiner agreed Florida Power should be compensated, but in lieu of the $3.08 per kw per year demand charge, proposed compensation based upon "50 percent of the difference between the total savings to Gainesville less the total savings to Florida Power, or vice versa" (App. 333).

The Commission prescribed compensation (based either upon a sharing of benefits, or return of a service in kind, or the seller's costs plus 10%) for every conceivable service across the connection but emergency backup service.[13]

[13] See paragraphs (7)(b), (d), (f), (g) and (8) of the Commission's Order which prescribe charges or sharing benefits whenever there is a sale or exchange of generating capacity or energy (App. 376-8).

With respect to emergency service, the Commission prescribed compensation only for energy delivered during an emergency.[14] Remarkably, the Commission failed to recognize that compensation for emergency energy in no way compensates for emergency backup service, which is not the supplying of energy but is the providing of facilities in a state of readiness capable of meeting immediately any generating deficiency. Emergency backup service is the "fire department". Emergency energy is the "water" used to put out the "fire". The Commission ordered Gainesville to pay for the "water" but relieved Gainesville from all responsibility to contribute to the cost of providing and maintaining the "fire department".

The Court of Appeals properly agreed with the Presiding Examiner that equity and the statutory pre-conditions of Section 202(b) require there be some reasonable compensation for the "number one" and the "extremely valuable service" which is the fundamental and underlying reason for the connection. The Court properly rejected the Commission's novel theory, seemingly created for this case,[15] that compensation for emergency backup service, but not compensation for any other service, should be based upon proportionate sharing of responsibilities according to size (relative burdens) and not upon services rendered or facilities supplied.

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[14] In paragraph (7)(e) and (g) (1) of its Order, the Commission provided for energy transferred during the first 60 minutes of an emergency to be returned in kind or paid for at 4 mills per kwh or the seller's fuel cost plus 10%, whichever is less. As noted above, Gainesville at all times will be relying upon Florida Power for emergency backup service whether or not energy is being transferred. The transfer of energy will be relatively unimportant. At 4 mills per kwh, 50 mw for one hour represents only a $200 transaction.

[15] So far as Florida Power is aware and can discover, the theory that the determining factor in fixing compensation is not services rendered or facilities supplied but is proportionate sharing of respon-

ARGUMENT

INTRODUCTION AND SUMMARY

The Court of Appeals' decision is clearly correct in remanding the case to the Federal Power Commission to fix some formula to compensate Florida Power for emergency backup service. Section 202(b) of the Federal Power Act requires, as pre-conditions to a forced connection, express findings by the Commission that such action is (i) necessary or appropriate in the public interest and (ii) not an undue burden upon the utility. These statutory pre-conditions require some provision for reasonable compensation where the connection will compel Florida Power to supply Gainesville with large quantities of extremely valuable emergency backup service and where Gainesville can not reciprocate by furnishing Florida Power with an equivalent service.

The Court of Appeals properly rejected the Commission's theory with respect to emergency backup service that there is no need to provide compensation if there will be a sharing of responsibilities or burdens in proportion to size. This relative burdens theory is utterly meaningless. As an actual, practical fact the connection inevitably and unavoidably will impose upon Florida Power entire responsibility at all times to provide emergency backup service for both systems. If Gainesville can and does assume responsibility to provide emergency backup service in proportion to its size, the amount is too small to have any significance or meaning whatsoever.

The decision of the Court of Appeals in requiring some formula for compensation on the basis of services rendered is consistent with industry practice and regulatory prece-

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sibilities according to size (relative burdens) has never been suggested by the Commission or by any other regulatory body on any prior occasion.

dent, and will encourage systems to interconnect by preserving the incentive or motivation that is the basis for interconnections between systems. Reasonable compensation is not a discriminatory charge or an economic penalty for being the last to join an interconnection. As proposed by Florida Power on the basis of an allocation of cost, the compensation would be only $154,000 a year for "an extremely valuable service" which Gainesville's principal witness stated would save the City $520,000 a year. The failure to require Gainesville to pay reasonable compensation is discriminatory of Florida Power and its customers, and imposes an economic penalty upon Florida Power and other systems which have been the first to form and join the interconnected network.

Florida Power will not derive from the connection any benefit which would justify the denial of compensation for providing Gainesville with emergency backup service. If and to the extent Florida Power receives any benefit, it will be in the form of a service across the connection for which Florida Power will pay compensation in accordance with the Commission's order either by sharing savings, returning the service in kind or reimbursing Gainesville for its cost plus 10%.

The decision does not infringe upon the discretion of the Commission or interfere with the exercise of its administrative expertise in determining what is reasonable compensation. The decision merely requires the Commission to act. It carefully preserves to the Commission complete freedom of action.

I.

THE DECISION OF THE COURT OF APPEALS IN REQUIRING SOME FORMULA FOR REASONABLE COMPENSATION FOR EMERGENCY BACKUP SERVICE IS CLEARLY CORRECT.

As pre-conditions to compelling a connection under Section 202(b) of the Federal Power Act, the Commission must find (i) "such action necessary or appropriate in the public interest", and (ii) "no undue burden will be placed upon" the utility. The last sentence of Section 202(b) states the Commission "may prescribe the terms and conditions" including "the apportionment of cost" and "the compensation or reimbursement reasonably due". It would seem axiomatic the Commission may not exercise the permissive power to prescribe terms and conditions in a manner that nullifies or negates the continued existence of the preconditions that its action (i) be necessary or appropriate in the public interest, and (ii) not place an undue burden on the utility.

The public affected by Gainesville establishing physical connection with Florida Power's transmission facilities is the 370,000 retail customers of Florida Power, the customers of Florida Power's 12 municipal and 9 REA wholesale customers, and Gainesville's 17,212 retail customers. Certainly public interest calls for what is best for this entire public and not just what will benefit the small public served by Gainesville (App. 135-6, 182-4).

The Court of Appeals accurately sifted the facts of this case from the fiction and correctly decided the case on the basis of the equities of the real facts. The Court recognized the real purpose and function of the interconnection is to obtain an additional power source for Gainesville; "the disparity in the sizes of the Gainesville and Florida Power systems and in the sizes of their electric resources is strik-

ing and highly signficant"; "Florda Power, because of the relatively small size of the City's generators, would receive no significant additional reliability"; "Florida Power's backbone transmission network has so many power sources more efficient and more economical than Gainesville's small generators it is totally unrealistic to consider the City's system a significant power source"; "Through the interconnection it [Gainesville] receives essential emergency back-up, which is a service at all times instantaneously available, and which protects it [Gainesville] against the outage of the largest of its generators"; the connection imposes upon Florida Power, really upon its customers through their cost-based rates, the entire burden and expense of providing extremely valuable emergency backup service for both the Florida Power and Gainesville systems; it is "imaginary equity" to excuse Gainesville from paying any reasonable compensation whatsoever for this "extremely valuable service" because of alleged benefits to Florida Power which are "largely illusory" and "unrealistic as well as vague" (App. 489-503).

The reasons why Gainesville should pay some reasonable compensation for emergency backup service are: first, emergency backup service is an extremely valuable service which is the underlying reason and justification for the connection and which is Gainesville's "number one" service requirement; second, the connection inevitably and unavoidably will impose upon Florida Power the burden and responsibility to supply emergency backup service for its own system and for the Gainesville system in an amount limited only by the capacity of the connection; third, emergency backup service is completely lacking in reciprocity or mutuality since Gainesville can not respond in kind because of the limited capability of its facilities; fourth, unless Gainesville compensates Florida Power for the continuous availability of emergency backup service, the cus-

tomers of Florida Power in their cost-based rates will be required to bear the whole cost of this service for both systems.

Florida Power proposed compensation be based upon an allocation of the cost of its backbone transmission network because this network is the means by which emergency backup service will be supplied to both systems. The network not only interconnects Florida Power's own power sources but makes available to the Florida Power system (and to Gainesville following interconnection) all power sources of the interconnected systems.

This $65 million transmission network, with annual fixed charges and operating costs of about $13 million, is the means by which Florida Power has obtained the financial benefits inherent in a reduction of its installed reserve of generation. By interconnection, Gainesville can effect a corresponding reduction in its installed reserve of generation because, and only because, Gainesville will be relying upon the network's power sources for the continuous availability of instantaneous emergency backup service. To the extent of its load and the capacity of the connection, Gainesville will place the same responsibility upon the network for emergency backup service as will Florida Power for its much larger requirements.

The suggestion of the Presiding Examiner that compensation be based not on a sharing of transmission costs but on splitting the operating savings has precedent in industry practice, particularly with respect to what are known as economy energy transactions, i.e. exchanging energy by utilizing for the load of both systems those generators on the combined systems having the lowest incremental operating costs. In fact, in paragraph (7)(b) of its Order in this case the Commission provided compensation by split-

ting the savings from economy energy transactions (App. 376-7). The suggestion of splitting operating savings is acceptable to Florida Power, as also is any other reasonable formula.

The fact Florida Power may be able to provide Gainesville with emergency backup service without any immediate increase in its own capital and operating costs is not a valid reason for not requiring Gainesville to pay its fair share of Florida Power's costs incurred to provide emergency backup service for both systems. If Gainesville is entitled to free service on a theory of no added cost, then any person desiring transportation when an airline has an empty seat should be entitled to a free ride, and any person desiring overnight accommodations when a hotel has an empty room should be entitled to free lodging.

Requiring Gainesville or any recipient of a valuable service to pay reasonable compensation is not discriminatory. However, flagrant discrimination is perpetrated if Florida Power's customers are required to pay in their rates the cost of continuous availability of emergency backup service (including service to Gainesville), and the same service is given to Gainesville's customers for free.

The argument that the Commission's Order imposes no firm obligation upon Florida Power to supply Gainesville with emergency backup service, that this service is to be supplied only in the event of an emergency on a when, as, and if available basis, obfuscates the actual, practical consequence of the Commission's Order which prescribes interconnection facilities "as described in Exhibit 3" (App. 375-6). Exhibit 3 contains the following:

"B. *Usage of Facilities*

1. The interconnection is to be operated closed at all times, except when opening is required for reasons

of safety, repairs or maintenance work. Both parties shall make every attempt to keep the duration of open circuit intervals to a minimum."

The behavior of electricity is such that with the connection operated closed Florida Power inevitably and unavoidably at all times will provide Gainesville with instantaneous emergency backup service in an amount limited only by the capacity of the connection. All of Gainesville's engineering witnesses acknowledged this to be a fact: Mr. Kelly, the manager of the Gainesville system (App. 54-5); Mr. Ebaugh, the design engineer for the Gainesville system (App. 36-8); Mr. Benson, a consulting engineer who was Gainesville's principal witness for this case (App. 84). Mr. Hebb and Mr. Woodson, engineers for Florida Power, also described this continuous availability of instantaneous emergency backup service to Gainesville (App. 165-6, 187-8).

Furthermore, in the operation of its backbone transmission network, Florida Power can not even subordinate Gainesville's needs for the continuous availability of reserve power to the needs of the Florida Power system without opening the connection in violation of the Commission's Order.

The argument that instantaneous emergency backup service will not be continuously available as a firm commitment from Florida Power to Gainesville but will be available to Gainesville only on a when, as and if available basis is belied by the fact Gainesville proposes to reduce its installed reserve of generation from about 100% to 15% of its peak load by relying upon the connection, and the Commission has ordered such a reduction. If there were any truth to this argument, Gainesville and the Commis-

sion would be irresponsible in proposing and ordering such a reduction in Gainesville's installed reserve of generation.

The argument that in some emergencies Gainesville will be able to contribute as much as 60 mw to 100 mw (limited by the capacity of the interconnection) is not a valid reason for denying compensation for the continuous availability of instantaneous emergency backup service because: (1) reserve generation which Gainesville or any system can make available after a short interval is very different from and no substitute for the continuous availability of emergency backup service immediately available; (2) when Gainesville's reserve is reduced to 15% of estimated annual peak hour demand, as ordered by the Commission, Gainesville will not have reserve capacity to supply 60 mw even if given two hours to start all of its units; (3) if and to the extent Gainesville during an emergency does make capacity or energy available after a short interval, it will be fully compensated by paragraph (7)(e) and (7)(f) of the Commission's Order; (4) if there is time for human reaction to start Gainesville's reserve generation, then Florida Power will have the same time to place reserve generation in service on its own system; and (5) if there is time for human reaction and Florida Power does not have sufficient reserve generation on its own system, other systems with whom Florida Power is interconnected have reserve generation provided by units which are much larger and more efficient than anything on the Gainesville system.

II.

REPLY TO ARGUMENT COMPENSATION FOR EMERGENCY BACKUP SERVICE SHOULD BE BASED UPON A PROPORTIONATE SHARING OF ELECTRICAL RESPONSIBILITIES.

1. *Proportionate sharing of electrical responsibilities works only one way where there is a large disparity in the capabilities of electrical resources.*

Commission's Brief in Case No. 469 begins its argument in support of its relative burdens theory by citing (on pages 15 and 16), in explanation of the savings that can be realized from interconnection, an example of four isolated systems each with an annual peak load of 500 mw served by several generators the largest of which on each system is 200 mw. In this example each system's proportionate share of the operating and installed reserve requirements of the interconnected systems is obviously the same. The interconnection is fully reciprocal because each system has the same potential for supplying each of the other systems with the same system reliability and emergency assistance as it will receive from each of the other systems. But this example and the relative burdens theory derived from it are in no way relevant or applicable to the case at bar.

Commissioner Carl E. Bagge of the Federal Power Commission, in an address before the American Public Power Association, Legal Seminar, on November 13, 1967, pointed out that a small system like Gainesville with a largest generator of 50 mw can not contribute significantly to a connection with a large system such as Florida Power:

> "It is, of course, obvious that an isolated system which is unable to install units in excess of 25 or 50 megawatts is not going to be able to take full advantage of the benefit of the new technology. The very fact, however, that its largest units are in this size category tends to produce a reluctance on the part of

its larger neighbors to pool with it since the great bulk of the benefits normally will flow to the small system, and from the viewpoint of the larger systems, even if the arrangements between the parties reflect this disparity, the necessary complications of any but the most rudimentary pooling arrangements may hardly be worth the effort."

Gainesville witness Ebaugh, since 1952 the principal design engineer for the Gainesville system, in Gainesville's Ten-Year Master Plan of September 1965, concluded the Gainesville system is not large enough "to contribute much" to an interchange arrangement, and "The Gainesville generating capacity is not large enough to contribute significantly to the Florida Power Pool at the present time".[16]

The principles and considerations governing the development of interconnection between electric systems are well described in an article entitled *Power Pools and Joint Plant Ownership* by Abraham Gerber, Public Utilities Fortnightly, Vol. 82, No. 6, p. 23 (9/12/68). This article at pages 28-9 explains that where there is a great disparity in size between systems being interconnected, "it is obvious that there would be no mutuality to any of the principal economic functions of the interconnection unless the small system made monetary payments for the excess of benefits it received." This is so because "The performance of the small system is irrelevant to the reliability of the bulk power supply of the larger systems. In the event of a disturbance of the small system, no matter what its magnitude, the generating and transmission facilities of the large systems would automatically compensate to maintain the stability of the interconnected systems. In the

[16] See Excerpts from Exhibit 100 in Appendix Exhibit Volume. This Exhibit was introduced in evidence at R. 1460.

event of a disturbance to power supply on the large systems, the small system could not compensate for the disturbance, even if it had all its units on the line . . . the small system achieves substantial additional reliability upon interconnection, while adding nothing to the reliability of the large systems."

As previously noted, the connection proposed in this case inevitably and unavoidably will impose upon Florida Power, the large system, responsibility to provide emergenery backup service for both systems. This is an inescapable fact resulting from the physical laws governing the behavior of electricity. The responsibility is a firm obligation imposed by natural law regardless of what the Commission may or may not say about Florida Power providing firm service to Gainesville. Florida Power not only is responsible to supply Gainesville requirements but can not even subordinate Gainesville's needs for emergency service to its own except by opening the connection in violation of the terms of the Commission's Order.

Conversely, it is totally irrelevant and immaterial whether Gainesville does or does not assume a proportionate share of responsibility. Gainesville's proportionate share of emergency backup service as a member of the Florida Operating Committee would be only about 12 mw to 15 mw, of which two-thirds or 8 mw to 10 mw would be spinning reserve instantaneously available and the rest would have to be available within ten minutes.[17] Assuming Gainesville can and does supply 10 mw to 15 mw of emergency backup service, these amounts are too small to have any meaning or significance. Florida Power, which must have 400 mw or more of emergency backup service continuously available, would derive nothing from Gaines-

[17] See Exhibit 76, Table A, in the Appendix Exhibit Volume. This Exhibit was introduced in evidence at R. 1148.

ville's 8 mw to 10 mw of spinning reserve because, as the Presiding Examiner pointed out, those small amounts are "less than the hour to hour deviations between Florida Power's actual and scheduled production, and less than the 30 mw to 40 mw margin of error which the Company [Florida Power] allows in making its spinning reserve calculations" (App. 173-5, 323).

The invalidity of the Commission's theory of proportionate responsibility in this instance is demonstrated by the fact that Gainesville, Florida Power and Commission staff witnesses agreed it is inadvisable for Gainesville to assume a proportionate share of responsibility for emergency backup service as ordered by the Commission because doing so would require Gainesville to incur the unnecessary and useless expense of operating its 24 mw, 16.5 mw and other small generators (App. 94-6, 167-8, 255-6, 322). Gainesville's proportionate share of responsibility is not only meaningless but requires a wasteful, uneconomic method of operation.

Where there is a large disparity in the capabilities of electrical resources, the plain, inescapable fact of the matter is, as the Court of Appeals so correctly stated: "The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit and does incur real, substantial responsibilities" (App. 503).

2. *The Relative Burdens Theory is Not Consistent With Industry Practice.*

Interconnection of electric systems is a development which the industry has voluntarily undertaken to obtain important service and economic benefits. The keystone of interconnections is service benefits, not burdens and not sharing burdens except as that sharing is of some benefit.

In its report known as the *National Power Survey* (1964), the Federal Power Commission described[18] the purposes of interconnections. The *Survey* refers repeatedly to "savings" and to "benefits", and does not mention relative burdens.

The development of interconnections and the underlying principles and considerations governing their development are well described in the article entitled *Power Pools and Joint Plant Ownership* by Abraham Gerber, Public Utilities Fortnightly, Vol. 82, No. 6, p. 23 (9/12/68). This article points out that by substituting transmission facilities for duplicative generating facilities, interconnected systems are able to exchange one or more service benefits, such as firm power supply, reduction of installed generating reserves, economic loading of generators, short or long term purchases of capacity and/or energy, utilization of load diversity to reduce generating requirements, greater flexibility in maintenance, and staggered construction of generators. Fundamental to every interconnection is emergency assistance by one system to another. Also, fundamental is reciprocity or mutuality in service benefits, and where a service can not be returned in kind, monetary compensation is required. No system is expected to subsidize another.

Commission staff witness Braitman in his explanation of interconnections and power pools recognized such arrangements are founded upon economic benefits and financial savings. He stated: "Intersystem coordination expanded steadily over the years as economic opportunities were made available by improving technology" (App. 425). "The significant fact is that all members of a power pool benefit. The distribution of benefits is dependent upon many factors" (App. 429). "The substantial economic benefits that

[18] Part I, Chapter 2, p. 169 et seq.

can be achieved from improved technology and interconnections should also stimulate the formation of new power pools and the expansion of existing ones" (App. 430).

Gainesville witness Benson stated, "the principal and underlying justification for the interconnection" in this case is the reduction in reserve requirements (available only to Gainesville), "the interconnection-coordination agreement is founded on the benefits of capacity savings" (App. 96). Witness Benson conceded these Gainesville capacity savings are made possible because of Florida Power's backbone transmission network and the many power sources with which it is interconnected (App. 82-3).

Florida Power's interconnection arrangements with other systems are indicative of industry practice. In the case of most of Florida Power's interconnections with Florida Power & Light Company, Tampa Electric Company, Orlando Utilities Commission, Georgia Power Company and Gulf Power Company,[19] there is reciprocity or mutuality in service benefits because each system is able to provide substantially equivalent emergency assistance to the others.

However, in the case of two connections lacking reciprocity in service benefits, Florida Power has effected special arrangements for monetary compensation. One such case involved a connection with Florida Power & Light Company which system was required to pay all of the fixed charges and administrative costs of a connection with Florida Power until the connection became mutually beneficial. The other such case is with Gulf Power Company to whom Florida Power is paying $5.80 per kw per year for 12 mw of demand for a connection which Gulf Power effected for

[19] Florida Power has no direct connection with Jacksonville Electric Authority and is connected to that system only indirectly as a result of interconnections with Florida Power & Light Company.

the unilateral benefit of Florida Power (App. 160). It is completely erroneous to ignore or to attempt to distinguish the special arrangements with respect to these two connections because they are typical examples of industry practice in providing financial payments to balance the absence of mutuality in service benefits.

Commission staff witness Braitman testified to the importance of transmission is handling emergency power and to the industry practice of compensating in some manner the party to an interconnection providing the greater share of transmission. On cross examination, he said, "in coordination, one of the biggest problems that individual systems have to work on is trying to achieve equity in the sense that the system that is providing a greater share of transmission be somehow compensated for it". As an example of one way to achieve equity, he explained that in the Pennsylvania-New Jersey-Maryland (P-J-M) pool, systems which have not provided a fair share of transmission have not been accorded equal treatment and have been required to maintain higher reserves (App. 243-4, 260-1).[20]

It is wrong to argue the proposal to require Gainesville to pay reasonable compensation for a unilateral service benefit is discriminatory because no similar charge is made

[20] Commission staff witness Braitman did not question that a party receiving a service should pay reasonable compensation for it, or criticize the way Florida Power measured Gainesville's share of the cost of providing the continuous availability of emergency backup service for both systems (App. 451). Witness Braitman objected to any payment of compensation by Gainesville on the ground that computer studies, which he called loss of load probability studies, showed Florida Power would place greater reliance upon and a greater burden upon the connection than Gainesville. The Court of Appeals correctly labelled this contention "largely illusory", "unrealistic as well as vague" (App. 502). At pages 36 to 38, *infra*, these loss of load probability studies are shown to be a mere theoretical exercise in arithmetic based upon utterly false premises.

by Florida Power for connections from which it obtains reciprocal emergency assistance and other benefits. Florida Power's fully reciprocal arrangements with other systems are in no way relevant to the Gainesville situation. However, it is discriminatory of Florida Power and its customers not to recognize the complete absence of mutuality in the connection with Gainesville and not to provide some financial payment to effect parity.

In sum, industry practice is founded upon the mutual exchange of economic benefits and upon some method of achieving equity where reciprocity is lacking. The industry has had little actual experience with connections where there is no reciprocity, as in the Gainesville situation and the example given by Commissioner Bagge in his 1967 speech. The industry has had no experience with forced connections compelled by order of the Federal Power Commission since this is the first fully litigated case.[21]

3. *The Relative Burdens Theory is Not Consistent With Commission Practice.*

Insofar as Florida Power can discover, the relative burdens theory has no precedent in Commission practice. In no other instance has the Commission applied this relative

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[21] The earlier case of *New England Power Company v. Federal Power Commission*, 349 F. 2d 258 (C.A. 1, 1965) was not really a forced connection case but was a rate case since the parties already were interconnected and the real issue was whether a municipality could obtain a lower rate for purchased power by compelling a direct connection and eliminating an affiliate-middleman. The prior decision in *Crisp County Power Commission v. Georgia Power Company*, 42 FPC 1179, 67 PUR 3d 75 (1966) is not a precedent because, as hereinafter noted on page 30, *infra*, the parties effected a settlement approved by the Commission in which it was agreed that Crisp County would compensate Georgia Power for standby service by means of capacity charges, and that the Commission's decision, never having become final, would be without force, effect, or precedential value.

burdens theory to refuse any formula for reasonable compensation to equalize service benefits.

As noted on page 25, *supra*, the Commission in its *National Power Survey* (1964) recognized that interconnections are founded upon the exchange of services and benefits.

In its Report to the President entitled *Prevention of Power Failures* (1967), the Commission stated (page 3) that reliability and economy provided by interconnections should be available to all users of bulk power, but "at the same time these users must contribute their proper share of the cost." On page 39 after expounding the importance of small systems participating in power pools and carrying their share of responsibilities, the Commission said, "To the extent it may be physically impossible for a small system to fulfill all such obligations in kind, equalization should take the form of exchanging power or dollars among the systems." Going on, the Commission said, "No formulae have been accepted as universally applicable to these situations . . . a wide range of pertinent factors are being considered such as relative benefits, methods of participation, reliability of service, conservation of natural resources, alternative opportunities and broad equities."

The Commission has jurisdiction under Sections 205 and 206 of the Federal Power Act (16 U.S.C.A. Sections 824 d and e) over rates for services provided by interconnection agreements. In its only reported decision involving rates for services across an interconnection, the Commission stated that interconnections are "a well established and growing industry practice" for "the interchange of various classes of service", that "By the very nature of any such coordination and interchange arrangement, there is a mutual exchange of services and benefits." *Public Service*

Company of Oklahoma, 25 FPC 656, 659, 38 PUR 3d 384, 388 (1961). With respect to rate making principles applicable to interconnections, the Commission went on to say the problems and issues "involving a mutual exchange of services in a power pooling or interchange arrangement are different from those arising in a rate proceeding involving a one-way service agreement", and that "other considerations, such as whether there is a sharing of the fruits of co-ordinated operations, all play a part."[22]

The only other known case is *Crisp County Power Commission v. Georgia Power Company*, 42 FPC 1179, 1189, 67 PUR 3d 75, 82 (1966). Footnote 23 on page 23 of the Commission Brief in Case No. 469 fails to tell the whole story of this case. It most assuredly is not a precedent for the Commission's relative burdens theory because under a settlement agreement approved by order of the Commission dated December 19, 1969, the case was settled by an agreement which provides for Crisp County to compensate Georgia Power for standby service by means of capacity charges. The settlement agreement also specified that the Commission's tentative opinion, "never having become final, will be without force, effect, or precedential value." In its tentative opinion which the Commission agreed should not have precedential value, the Commission, in its discussion of the provisions of Section 202(b), said, "It is clear that under these standards [the pre-conditions of Sec-

[22] The decision recognized standby or emergency service is a separate class of service. Since the emphasis of the opinion is upon the mutual exchange of services, presumably the capabilities of the systems to provide this service were mutual. The decision provides for emergency energy deliveries of less than 24 hours duration to be returned in kind and of more than 24 hours duration to be paid for at 5¢ per kw per day plus an energy charge. This is an appropriate method of compensation where there is mutuality in the ability to provide emergency assistance, but is not appropriate where mutuality is lacking.

tion 202(b)], interconnections between large and small systems need not, and in fact cannot, be a one-way street with all the benefits thereof flowing to the small system."

The hearings in this Gainesville-Florida Power case were closed in March 1967. The files of the Commission, which are a matter of public record, show that since that date the Commission has approved compensation for emergency backup (standby) service in all respects identical to that requested by Florida Power and for which the Court of Appeals has ordered the Commission to fix some formula.

Southeastern Power Administration (SEPA) is an agency of the United States Government within the Department of the Interior. SEPA, under its rate schedule SC-1 (Revised), approved by the Federal Power Commission on June 29, 1970, charges South Carolina Public Service Authority for dependable capacity $0.90 per kw per billing month ($10.80 per kw per year) and for standby capacity $0.25 per kw per billing month ($3.00 per kw per year), plus 3 cents per kw per calendar day or fraction thereof for such standby capacity actually utilized.

The files of the Commission also show that on June 17, 1968,[23] the Commission approved SEPA's rate Schedule CR-2-A for the supply of standby service to three generation and transmission cooperatives. That Schedule provides for a standby capacity charge of $2.75 per kw per year, plus 4 or 6 cents per kw per day for standby power

[23] In the order of June 17, 1968 approving SEPA's charges for emergency standby service in its Schedule CR-2-A, the Commission found that SEPA's rates would not be inconsistent with the Flood Control Act of 1944. Section 5 of that Act (16 U.S.C.A. § 8255) requires power and energy to be disposed of in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The Act directs rate schedules shall be drawn having regard to the recovery of the cost of producing and transmitting such electric energy.

actually delivered, plus an energy charge of 3.25 mills per kwh for all emergency standby energy. Two cooperatives are each being charged by SEPA for 100 mw and the third for 38 mw of standby capacity.

The Commission, on page 23 of its Brief in Case No. 469, attempts erroneously to distinguish these SEPA rates from that proposed by Florida Power on the ground the SEPA rates are for a firm reservation of generating capacity, and by contrast, Florida Power would be under no firm obligation to provide power or reserves to Gainesville. In actual fact, the reverse is true. As previously noted, the inevitable and unavoidable consequence of Gainesville tapping Florida Power's backbone transmission network is that Florida Power at all times will provide a continuous availability of instantaneous emergency backup service limited only by the capacity of the connection. Florida Power's commitment by natural law is firm, positive and inescapable. By contrast, SEPA's rates for standby service by contract are predicated upon the same 100 mw being sold as standby capacity to three customers with the understanding the customer first in need shall have the first call on that capacity. Thus, the SEPA commitment is not a firm dedication of capacity to each of the three customers but is a limited obligation to furnish emergency power on a when, as and if available basis.

Rate schedules accepted by the Commission include others that provide some formula to compensate for emergency backup or standby service where reciprocity is lacking. Examples may be found in rates filed by Virginia Electric Power Company, Central Louisiana Electric Company, Inc., Utah Power and Light Company, Nevada Power Company, and Kansas City Power and Light Company.

It is plainly wrong to argue, as is done in Petitioners' Briefs in both Cases Nos. 464 and 469, that to allow Florida Power reasonable compensation for emergency backup service would violate the Commission's fundamental principles of setting rates on the basis of costs and not on the basis of the value of the service as disapproved in *South Carolina Generating Co. v. Federal Power Commission*, 249 F. 2d 755 (C.A. 4, 1957), certiorari denied 356 U.S. 912, and other cases cited. These decisions have no relevance because Florida Power has not proposed a rate based upon the value of the service to Gainesville. Florida Power has proposed a rate of $154,000 a year based upon an allocation of its costs for a service which Gainesville's principal witness testified will provide savings of $520,000 a year. Nor would the alternative suggestion of the Presiding Examiner that compensation be based upon a splitting of benefits be rate making on the basis of the value of the service.

3. *The Relative Burdens Theory Will Discourage Not Encourage Interconnections.*

The Commission's argument on page 17 of its Brief in Case No. 469 that its relative burdens theory is necessary to encourage and maximize interconnections is just plain wrong. The argument is based upon an erroneous premise that the industry is now composed of a large number of power pools voluntarily negotiated to share burdens in proportion to size.

As previously noted, the motivation and incentive for interconnections is the obtainment of services and benefits. Systems will be discouraged from effecting voluntary interconnections if the motivation and incentive is removed, and the relative burdens theory requiring one system to

subsidize another is substituted. The Commission correctly stated the proper way to encourage interconnections in its Report to the President on *Prevention of Power Failures* (1967) when it said each system "must contribute their proper share of the cost" and that in negotiations between utilities consideration should be given to a wide range of pertinent factors including relative benefits and broad equities.

The proven and established way to encourage interconnections is to provide some economic benefit for each party. Commission staff witness Braitman so testified in this case: "The substantial economic benefits that can be achieved from improved technology and interconnections should also stimulate the formation of new power pools and the expansion of existing ones" (App. 430).

There is no valid basis for the argument that the relative burdens theory is necessary to prevent the imposition of an economic penalty for being the last one to join an interconnected network. An interconnected network or power pool is effected only at substantial expense to the parties first to join in their contributions of transmission and generating facilities. If a party seeks to join an interconnected network or power pool to which it can make no meaningful contribution, an economic penalty is imposed upon the parties first to join who have paid for the existing construction if the party last to join is given a free ride just because the network has already been paid for by others.

In this case the interconnected networks of participants in the Florida Operating Committee have been effected at the very substantial expense of $65 million by Florida Power plus a much greater sum representing the combined expenditures of Florida Power & Light Company, Tampa Electric Company, Orlando Utilities Commission and Jack-

sonville Electric Authority. An economic penalty is imposed upon Florida Power and these other systems, and not upon Gainesville, if Gainesville is given free use of the networks to which by its own admission Gainesville can not contribute much.[24] It is the Commission's refusal to fix any formula for reasonable compensation that imposes an economic penalty.

Nor is it a valid argument that it is necessary to refuse compensation for an extremely valuable service by application of the relative burdens theory in order to maximize the benefits of interconnections by encouraging small systems to install larger generators. The $154,000 a year charge proposed by Florida Power is intended only for the foreseeable future in the light of Gainesville's pronouncement that it "needs and wants" emergency backup service in the magnitude of its largest 50 mw unit and on the basis of the demands that Florida Power's and Gainesville's 1970 load projections impose upon Florida Power's transmission system. The terms of any connection including compensation are always subject to renegotiation as circumstances change on either or both systems. Florida Power witnesses Hebb and Woodson acknowledged the installation of a large, efficient generator by Gainesville would be such a change in circumstances (App. 175, 196). Thus, imposing a charge for standby service is an incentive, not a deterrent, to a small system to install larger generation that will have some value to an interconnection since by doing so the small system can obtain relief from the charge. If given free standby service, the small system has less incentive to install larger generation.

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[24] As previously noted, Gainesville witness Ebaugh, who designed the City's system, stated Gainesville can not contribute much to an interconnection. See Exhibit 100 in Appendix Exhibit Volume. This Exhibit was introduced in evidence at R. 1460.

III.

REPLY TO ARGUMENT GAINESVILLE WOULD NOT IMPOSE AN UNDUE ELECTRICAL BURDEN AND WOULD ASSUME PROPORTIONATE ELECTRICAL RESPONSIBILITIES.

This argument is fundamentally fallacious because it is based upon the premise that sharing burdens and responsibilities has some meaning and significance. The evaluation of burdens and responsibilities on pages 26 to 30 of the Commission's Brief in Case No. 469 in support of this argument is equally fallacious because it is based upon fiction and not fact.

1. *Florida Power's Burdens and Responsibilities.*

The argument that certain so-called loss of load "probability" studies conducted by Commission staff witness Braitman demonstrate the electrical burden that Florida Power can be expected to place upon the connection was correctly labeled by the Court of Appeals "unrealistic as well as vague."

The very name of the studies (loss of load probability) is misleading. The studies assume Florida Power to be an isolated system, which it is not, and that if Florida Power were to suffer a generating deficiency, it could obtain assistance only from Gainesville. The studies ignore the fact Florida Power has many interconnections with five other utilities having resources vastly greater and far more efficient than any reserve generation on the Gainesville system (App. 224-7, 262-3). At best the studies suggest a mere theoretical possibility, not a "probability", of loss of load.

The studies examine Florida Power's generating resources[25] discounted by Company or industry experience

[25] 200 mw purchased by Florida Power under a firm contract with Tampa Electric Company is added to Florida Power's generation. See Exhibit 98 in Appendix Exhibit Volume.

with outages of equipment, in comparison with its load requirements. For example, 625 mw from Florida Power's largest generators is assumed to be available only 86% to 88% of the time (Ex. 98). The comparison shows a theoretical possibility, assuming outage of Florida Power generation coincident with its peak requirements and assuming emergency assistance is not available from any other system, that Florida Power would not be able to supply its load during 1969 for a period of 44 to 53 hours.[26]

The alleged improved system reliability is a reduction in the alleged loss of load "probability" to from 25 to 32 hours[27] computed by examining Florida Power's generation and load requirements in combination with Gainesville's generation and load requirements. The "improvement" is dependent upon a combination of assumptions all of which must occur at the same time (a) Florida Power suffers a loss of load because of assumptions with respect to outage of its generation, as during the 12% to 14% of the time when it is assumed 625 mw will be out of service, (b) Florida Power is not interconnected with any system but Gainesville and is not able to obtain assistance from anyone but Gainesville, (c) Gainesville at the time has unused generation in an amount sufficient to meet Florida Power's deficiency, and (d) Gainesville's unused generation (including the 5 mw, 12.5 mw and 16.5 mw generators which are seldom used and require two hours to be brought on the line) is available instantaneously or within whatever short period of time may be dictated by the emergency.

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[26] The studies say the loss of load probability during 1969 is in the range of 0.0061 to 0.0050. This represents 44 to 53 hours in a year of 365 days with 8760 hours (App. 261-2).

[27] The studies refer to the reduction to a range of 0.0037 to 0.0029 (App. 261-2).

Obviously, these studies are a mere theoretical exercise in arithmetic and do not demonstrate that Florida Power will burden the connection or derive any system reliability from the connection.

On the subject of system reliability, it is argued that some consequence should be attributed to Gainesville's generators, because of their small size, having a greater reliability, i.e. fewer equipment failures, than Florida Power's much larger generators. Admitting this to be true, which it is because Gainesville's small equipment is relatively unsophisticated, obviously Florida Power will derive nothing from the reliability of generators which are too small to take into account in planning and operating its system.

It is also argued Florida Power's system can use the connection as an additional power source for its load in the Gainesville area; whereas Gainesville's principal witness, Mr. Benson, testified the connection proposed by Gainesville, which is the one ordered by the Commission, would not do this (App. 80).[28]

For Gainesville's generation to be an additional power source for Florida Power's loads in the Gainesville area, it would be necessary to construct an interconnection at or near Florida Power's Gainesville substation. The cost of such a connection has been estimated to be about $900,000 based upon 1965 prices (App. 304, 312). Florida Power could not justify incurring any such expense for a fourth power source since it has three power sources for its loads in the Gainesville area and has never suffered an outage which a fourth power source would have prevented (App. 162-3).

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[28] Obviously the connection will not provide Florida Power with an additional power source for its loads in the Gainesville area since the connection is at Archer on Florida Power's 230 kv transmission line and any energy from Gainesville to serve Florida Power's loads in the Gainesville area would have to be returned to the Gainesville area on Florida Power's existing 69 kv line.

2. *Gainesville's Burdens and Responsibilities.*

It is argued that Commission staff witness Braitman's loss of load probability studies show Gainesville will seldom burden the connection with demands for emergency power. These studies and this argument ignore the admitted fact Gainesville "needs and wants" to rely upon Florida Power's backbone transmission network for the continuous availability of instantaneous emergency backup service so as to be able to reduce the City's required reserve of generation from the size of its largest unit (which at the hearings in this case was 50 mw or about 100% of peak load) to 15% of its peak load. Gainesville's use of the connection will be constant, whether or not it is taking power.

There is no validity to the argument that the Commission's Order imposes upon Gainesville the obligation to construct the connection at an estimated cost of $3,000,000 and that this obviates the need to compensate Florida Power for emergency backup service. As previously noted, Gainesville proposes to construct about 7 miles of 115 kv line at an estimated cost of $1.5 million to tap Florida Power's backbone transmission network. Whether the cost of this tap line is $1.5 million or $3 million, it is not an expense which Florida Power could justify incurring or contributing to for its own system because there is no offsetting economic benefit to Florida Power. It, therefore, is not an expense for which Florida Power can give Gainesville any credit in the terms of the interconnection. And since the incurring of this expense by Gainesville is for its own unilateral benefit, it has no relationship or relevance whatsoever to whether Gainesville should pay reasonable compensation for the continuous availability of instantaneous emergency backup service furnished it by Florida Power's backbone transmission network.

Furthermore, the Commission's Order imposes no obligation upon Gainesville because, not being subject to the Commission's jurisdiction,[29] Gainesville can take or leave the Commission's Order. If Gainesville constructs the connection, it will not be because of any obligation imposed by Order of the Commission. It will be done voluntarily to obtain emergency backup service which Gainesville's principal witness testified would give the City savings of $520,000 a year, net after deducting the expense of the connection.

Nor is it valid to attribute any significance to paragraphs (7)(a) and (c) of the Commission's Order which purport to impose upon Gainesville the burden and obligation to maintain installed and operating reserves of 15% of estimated annual peak-hour demand (App. 376-7). If determined from Gainesville's 1965 peak load, these reserves would be only about 9 mw, and if determined from Gainesville's projected 1970 peak load, these reserves would be only about 15 mw. Assuming Gainesville sees fit voluntarily to subject itself to these requirements, the quantities are too small to have any significance or meaning to the interconnection.

In imposing an operating reserve requirement upon Gainesville, the Commission lost sight of the fact that Gainesville, Florida Power and Commission staff witnesses agreed that such a requirement would be meaningless and even "inadvisable." Since the connection will fully protect Gainesville whether or not Gainesville supplies the small amounts of spinning and ready reserve of which it is capable, it will be more economical for Gainesville to

[29] Gainesville is exempt from the Federal Power Act by Sections 3(3) and 201(f). 16 U.S.C.A. Secs. 796 (3) and 824 (f). In fact, Gainesville's electric utility operations are not subject to any regulation, federal or state (App. 58-9).

operate a minimum amount of its own generation and to save the expense of operating its 24 mw, 16.5 mw and other small units whose operation would be necessary to provide a meaningless reserve (App. 94-6, 167-8, 255-6, 322).

IV.

REPLY TO ARGUMENT COMPENSATION FOR EMERGENCY BACKUP SERVICE IS NOT JUSTIFIED BECAUSE OF POTENTIAL BENEFITS TO FLORIDA POWER.

If and to the extent Florida Power does derive any actual benefit from the connection, it will be in the form of capacity and/or energy purchases across the connection for which the Commission's Order provides full compensation to be paid to Gainesville. Actually, the Order requires Florida Power to overcompensate Gainesville for capacity purchases because the capacity charge of $.05 per kw per day in paragraph (7)(g)(2) of the Order is based upon Florida Power's costs which include fixed charges of 15%, whereas Gainesville because of its tax exemptions has fixed charges of only 10% (App. 76). Florida Power, if it were to make a capacity purchase from Gainesville, would be charged a rate violating cost of service rate making principles. See *South Carolina Generating Company v. Federal Power Commission*, 249 F. 2d 755 (C.A. 4, 1957), certiorari denied, 356 U.S. 912.

The Court of Appeals correctly labeled any other alleged benefits to Florida Power "unsubstantial as well as vague."

(1) *Improved system reliability.*

Theorizing that the connection will improve Florida Power's system reliability is shown on pages 36 to 38, *supra*, to be totally unrealistic.

(2) *Saving in capital costs.*

Gainesville argues the connection will provide "a gross saving in capital costs of $6,400,000 with $2,000,000 thereof going to Florida Power." This statement is derived from testimony of Mr. Benson which was rejected by Commission witnesses and ignored by the Presiding Examiner and by the Commission. The $2,000,000 is Mr. Benson's estimate of the cost of installing a 23 mw gas turbine. Mr. Benson did not say the connection would save Florida Power the cost of installing such a unit. Rather Mr. Benson testified if there were a seasonal exchange of capacity the connection would increase Florida Power's sales capacity by this amount.

The Commission makes no such argument in its Brief in Case No. 469.

(3) *Seasonal exchange of capacity.*

Gainesville argues Florida Power would benefit from a seasonal exchange of 20 mw of capacity. This alleged possibility of a seasonal exchange of capacity was responsible in large part for Mr. Benson's theory the connection would increase Florida Power's sales capacity by 23 mw, which he equated to a $2,000,000 gas turbine. See (2) immediately above.

Commission witnesses opposed a seasonal exchange of capacity. The Presiding Examiner and the Commission refused to order a seasonal exchange, and Gainesville took no appeal from the Commission's refusal to order a seasonal exchange. It would seem, therefore, the matter is not properly before this Honorable Court.

The Commission makes no such argument in its Brief in Case No. 469.

(4) *Reduction in capacity purchases from other systems.*

Gainesville argues Florida Power could save $2,800,000 by postponing the installation of new generating facilities. This patently unrealistic suggestion is derived from the fact Florida Power deferred the installation of its 527 mw generator two years by purchasing 200 mw of capacity from Tampa Electric Company. The 36.4 mw reserve capability which Gainesville projected for 1970 is not sufficient to reschedule a 527 mw unit. Furthermore, a 527 mw unit can be deferred only by purchasing firm power from some one. To the extent Gainesville could supply power to defer such a unit, Florida Power would have to pay Gainesville for this power, and payments to Gainesville would offset any reduction in payments to some one like Tampa. While Gainesville because of tax exemptions has lower fixed charges and lower capacity costs than a system like Florida Power or Tampa, the purchase of power to defer installation of a 527 mw generator involves the purchase of capacity and energy. Gainesville's small generators are less efficient and more costly in supplying energy than the large generators of a system like Tampa. It, therefore, probably would cost more to purchase power from Gainesville than from Tampa, and Florida Power would suffer a loss rather than realize a benefit.

The Commission makes no such Argument in its Brief in Case No. 469.

V.

THE DECISION OF THE COURT OF APPEALS DOES NOT INFRINGE UPON THE COMMISSION'S EXERCISE OF INFORMED JUDGMENT IN A TECHNICAL AND COMPLEX FIELD.

In this case the Commission failed to exercise its informed judgment when it provided compensation for every

service except emergency backup service which is the principal and underlying reason for the connection. The decision of the Court of Appeals remands the case to the Commission to have it exercise its informed judgment by fixing some formula for computing reasonable compensation for "an extremely valuable service" which is the "number one" service which Gainesville needs and wants. The Court was extremely careful not to infringe upon the Commission's exercise of its expertise, saying, "we do not even whisper what that formula should be." The Court left the Commission complete latitude within which to exercise its judgment by fixing a formula based upon a sharing of costs or a splitting of benefits or something completely different. The decision merely requires the exercise of judgment without in any way interfering with how it shall be exercised.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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Attorneys for Respondent.

January 1971

APPENDIX

EXCERPT FROM ORAL ARGUMENT BEFORE THE FEDERAL POWER COMMISSION ON JULY 9, 1968

(1682) (Commissioner Carver) Suppose the company just filed a rate schedule for this kind of service, fixing the charges for it?

(Mr. Spiegel) Yes, sir.

(Commissioner Carver) The same kind of service you are asking for.

(Mr. Spiegel) Yes, sir.

(Commissioner Carver) What would be your remedies, if any, with complying with that service and taking it on their terms?

(Mr. Spiegel) Well, then, of course—

(Commissioner Carver) Gainesville is the only one, but you know that is just happenstance. Isn't it within their jurisdiction to file such a schedule?

(Mr. Spiegel) Yes. It is your jurisdiction to decide whether the terms are reasonable.

(Commissioner Carver) Now, that gets us to the point, what is the basis for that compensation as you see the law?

(Mr. Spiegel) Well, that is the other part of the case. The basis for it is this, that you have in Florida a pool, and a system which stops being isolated and becomes part of the pool.

(Commissioner Carver) Now, wait a minute. What I am trying to get at is, let's not talk about the pool, let's talk about Florida Power Corporation.

(1683) You said it is a monopoly now.

(Mr. Spiegel) The transmission service, yes, sir.

(Commissioner Carver) Let's just look at it. Must we consider its pool connections in determining its terms and conditions for basis—

(Mr. Spiegel) I would think so. As a matter of fact, I would think so, and I would say this, that if you look at that company by itself, that they were isolated, I am not so sure we would have anything we could rely on. They run figures of reserve of seven or eight percent of their load. They are running very close, and the only reason they can run so close as to reserves is because they are part of a pool.

Now the answer to your question is this: What kind of service are we asking and what should we pay for it? We are asking, number one, we can live without everything else, but number one, we are asking for emergency backup service. We are saying if we have trouble, and you have spare capacity, you help us, and we say in reply that we will make available to you all the spare capacity we have when you are in trouble.

(Commissioner Carver) Now, Florida Power Corporation is your defendant.

(Mr. Spiegel) That is right.

(Commissioner Carver) You just said they don't have any (1684) service for you if you don't take into account their pool situation.

(Mr. Spiegel) Well, I don't think I said it like that. It is a pretty thin reserve they have.

(Commissioner Carver) Let's take your statement.

They might be able reasonably to deny you if they — if you looked at them by themselves.

(Mr. Spiegel) Well, the point is, it is on a when, as and if basis they make it available, and they don't have it, they don't have to make it available to us.

(Commissioner Carver) What they do have is the net product of their interconnections, is that true?

(Mr. Spiegel) That is correct.

(Commissioner Carver) And this makes it valuable to Gainesville.

(Mr. Spiegel) That is absolutely true.

(Commissioner Carver) Are you supposed to pay for that?

(Mr. Spiegel) Well, we enter the pool, we pay what everybody else pays on a fair pro rata share.

(Commissioner Carver) But you take the pool as it has all been put together. You have been laying out of it for 30 years.

(Mr. Spiegel) Well, one thing, we have grown big enough where the pool is important in our thinking, and these things are historic. Let's assume that to be the case. If there (1685) are some payments we owe to them because of capital benefits that have been stored up in the past, of course we have to come in on a fair basis — like a man joins a church, and they say "Wait a second, you waited until the church was built," and make him take out a membership as before the church was built.

(Commissioner Carver) So you disagree with Staff, who says you take it as it is, and go from there.

(Mr. Spiegel) I think I am being big about it, because I don't think there is any such thing in existence. The theory is there. The important thing is, and the heart of it is this: We come to them, and we pay for it. We are putting up $2 million, they are not putting up a cent when we interconnect with them, and we have agreed, and the Examiner has fixed a 15 percent reserve ratio for us, we are making available to them, just as though it was their own capacity, some 15,000 — this is where the argument is, something between 15,000 and 14,000 kilowatts, which is available to them just as though it were their own machines, and doesn't cost them anything, and that is 15,000 — let's say the minimum figure, $150.00 a kilowatt, that is a million and a half investment they don't have to make, but in effect, they get the benefit of it.

* * * * * *

Docket No. E-7257
FLORIDA POWER CORPORATION
Exhibit No. 34[1]
Witness: M. F. Hebb, Jr.

FLORIDA POWER CORPORATION
ESTIMATED FUTURE ANNUAL DEMANDS
1967-1975

Year	*Demand (MW)*
1967	1,510
1968	1,610
1969	1,718
1970	1,826
1971	1,937
1972	2,053
1973	2,173
1974	2,296
1975	2,424

[1] Introduced in evidence at R. 967.

Docket No. E-7257
FLORIDA POWER CORPORATION
Exhibit No. 40[2]
Witness: M. F. Hebb, Jr.

CONTRACT
FOR
INTERCONNECTION AND ELECTRIC SERVICE
BETWEEN
FLORIDA POWER CORPORATION
AND
CITY OF GAINESVILLE, FLORIDA

Section 0.1. THIS CONTRACT, made and entered into this ..... day of ....., 196....., by and between FLORIDA POWER CORPORATION, a private corporation organized and existing under the laws of the State of Florida, herein referred to as the "CORPORATION", party of the first part, and the CITY OF GAINESVILLE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, herein referred to as the "CITY", party of the second part;

WITNESSETH

Section 0.2. Whereas, the parties hereto have entered into a separate contract in the public interest under which the parties have established mutually agreeable service territories in Alachua County in the area outside of and contiguous to the boundary of the municipal corporation, and will file this service territory contract with the Florida Public Service Commission for its approval; and

Section 0.3. Whereas, the parties hereto deem it desirable that this arrangement be made for the interconnection of the generating and transmission system of the COR-

[2] Introduced in evidence at R. 967. As introduced in evidence, Exhibit 40 did not include Schedule D (pp. 21a to 25a, *infra*) for Firm Interchange Electric Service because Gainesville had insisted it did not want to purchase any firm service. Schedule D was added in the brief filed with the Presiding Examiner in order to give Gainesville the opportunity to avail itself of this additional service should it see fit to do so.

PORATION with the generating and transmission system of the CITY at the point established as herein provided; and

Section 0.4. Whereas, each party desires to establish the terms and conditions of the interconnection arrangement for their respective systems.

Section 0.5. Now, Therefore, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF CONTRACT

Section 1.1 — Term: The term of this CONTRACT shall commence on the ..... day of ....., 196....., and shall continue in effect for a period of five years, and thereafter shall automatically be extended for succeeding periods of three years each except that this CONTRACT may be cancelled by either party upon three years' written notice to the other party, or as provided in Section 9.1.

ARTICLE II

INTERCONNECTION POINT

Section 2.1 — Interconnection Point: The CORPORATION and the CITY agree to construct, maintain and continue in operable condition facilities to effectively use a 115,000 nominal volt connection at the Archer substation of the CORPORATION or as later determined pursuant to Section 2.2.

Section 2.2 — Ownership: The ownership of the 115,000 volt connection facilities shall be as follows:

(1) The CORPORATION and the CITY shall mutually determine ownership of facilities in the Archer substation. The CORPORATION shall, however, provide and own all metering equipment.

(2) The CITY shall provide and own all transmission line and interconnection facilities from a point on the CITY'S system to the 115,000 volt connection at CORPORATION'S Archer substation; provided, however, the CITY agrees that all or any part of its 115,000 volt trans-

mission line shall be made available for purchase by the CORPORATION from time to time in order that CORPORATION may serve customers within its service area. Such purchase shall be on the basis of depreciated book cost.

Section 2.3 — Delivery Point: The point of delivery shall be the metering point as it shall be located from time to time subject to the provisions relating to ownership of facilities in Section 2.2.

Section 2.4 — Accessory Facilities: The parties hereto will provide communication, telemetering, load-control and frequency-control equipment and such other facilities for load dispatching purposes and for control of power flow and flow of reactive kva as is now or may hereafter reasonably be required in accordance with good, modern practice.

Section 2.5 — Parties Responsible: Each party hereto shall provide, operate, and maintain at its own cost and expense such of the equipment and facilities as may be constructed pursuant to the foregoing provisons of this ARTICLE II.

ARTICLE III

OPERATION

Section 3.1 — Administrative Committee: Each party shall appoint one person to an Administrative Committee. This committee shall represent the parties in all matters arising under this CONTRACT which may be delegated to it by mutual written agreement of the parties hereto. Each party shall cooperate in providing to the Administrative Committee all information required in the performance of its duties. If the Administrative Committee is unable to agree unanimously on any matter falling under its jurisdiction, such matter shall be referred by the members of the Administrative Committee to the parties for decision. All decisions and agreements made by the committee shall be evidenced in writing.

Section 3.2 — Operating Committee: Each party shall appoint one person to be a member of an Operating Com-

mittee, who shall be a responsible person connected with day-to-day operations of each of the parties hereto. This committee shall operate under the direction of the Administrative Committee and shall perform the duties as may be required of it by the Administrative Committee. Such duties shall include preparation of operation and maintenance schedules, control and operating procedures, and supervision of accounting functions. If the Operating Committee is unable to agree unanimously on any matter falling under its jurisdiction, such matter shall be referred to the Administrative Committee for decisions. All decisions and agreements made by the committee shall be evidenced in writing.

Section 3.3—Parallel Operation: Systems of the CORPORATION and the CITY shall normally be operated in parallel, with circuits closed at the interconnection point set forth under Section 2.1 hereof, except as may be otherwise mutually arranged by authorized representatives of the parties hereto, and except during normal switching operations or as follows:

(1) It is recognized that due to the extreme differences in size of the electric systems of the two parties, power will immediately flow for an indeterminable length of time from the CORPORATION to the CITY upon sudden outage or maloperation of generating equipment in the CITY'S system.

(2) It is further recognized that the system of CORPORATION is exposed to unavoidable power flows to the CITY; therefore, if the flow of power over the system of either party is detrimental to customer's service, or is detrimental to the system operation of either party, or results in abnormal transmission losses on either system, then the party which in its judgment so suffers injury shall have the right to open the interconnection to relieve its system of the burden being imposed upon it by such flow of power and keep said interconnection open until such impairment is overcome,

provided, however, that notice shall be given to the other party when practicable before any interconnection is opened.

Section 3.4—Reactive KVA: Each party shall endeavor to supply the reactive kva required on its own system, except as otherwise mutually agreed between the parties from time to time. Neither party shall be obligated to supply reactive kva to the other party when to do so would interfere with service on its own system, would limit the use of interconnection facilities, or would require operation of generating equipment not otherwise required. If the flow of reactive kva over the interconnection is detrimental to customer service or system operation of either party, then the party which in its judgment so suffers injury shall have the right to open the interconnection between the parties hereto to relieve its system of the burden imposed upon it by such flow of reactive kva; provided, however, that prior notice shall be given to the other party when practicable, so that any feasible corrective measures may be put into effect before opening the interconnection.

Section 3.5—Regulation of Transfer of Power and Energy: The parties hereto agree that it is the responsibility of each party to operate its power supply facilities so as to supply its own system load at all times, except as may otherwise be provided for herein or as mutually agreed, and to hold deviations from scheduled deliveries to a minimum. To this end, the CITY shall provide and operate load control equipment acceptable to the CORPORATION and in accordance with standard practice so as to avoid making objectionable demands upon the CORPORATION'S system during normal operation. The CITY agrees to conduct its operations in accordance with currently accepted practices in interconnected electric utility operations.

ARTICLE IV

ELECTRIC SERVICE

Section 4.1—Electric Service: It is recognized that transfer of various specific classes of service and the rates

applicable to each class of electric service must necessarily depend upon the conditions existing from time to time. The sale and purchase of specific classes of electric service and the terms, arrangements and rates applicable thereto are set forth in three Electric Service Schedules, which Service Schedules have been executed by the parties hereto and which are a part of this CONTRACT. These Service Schedules are respectively referred to as:

Service Schedule A—Emergency Electric Service

Service Schedule B—Scheduled Electric Service

Service Schedule C—Economy Energy Service

Section 4.2—Inadvertent Transfer of Electric Energy: Inadvertent transfer of energy is a transfer of energy between the systems of the parties hereto in excess of the scheduled delivery as a result of the inherent physical and electrical characteristics of the systems, limitations in the equipment used to control the flow of power between the systems or limitations in the operation of such equipment. Inadvertent transfers of energy shall be returned in kind at times mutually agreed upon (when the value of the energy to the party to which such energy is returned is substantially equal to the cost of the corresponding energy originally delivered), or such energy be paid for. At any time either party may require a cash settlement, upon thirty (30) days' notice at a rate determined in accordance with Service Schedule B, Section B 0.4, as it relates to energy.

ARTICLE V

METERING PROVISIONS

Section 5.1—Metering: CORPORATION shall install necessary metering equipment to permit determination of the amounts of electric power and energy transmitted over the interconnection described in Section 2.1 hereof.

All meters pertaining to billing shall be sealed and shall, except in an emergency, or as provided below, be opened

only in the presence of authorized representatives of both parties hereto. The meters and associated equipment of each party shall be tested and inspected annually, unless otherwise mutually agreed. The party making such tests shall give the other party at least ten days' notice in order that the other party may, at its option, be represented at the test. Said parties shall make additional tests and inspections of their meters upon request of the other party. If any test or inspection shows any meter to be inaccurate by more than one per cent, fast or slow, an adjustment in billing between the parties shall be made during the following month for a preceding period of not more than thirty days to adjust for the amounts by which the meters are shown to have been in error; and the meter or other equipment found to be inaccurate or defective shall promptly be repaired, adjusted, or replaced by the party owning it. Each party shall promptly report to the other party an adjustment, repair, or replacement of any metering equipment. Should one party's meters fail to register at any time, deliveries during the period of failure shall be determined from the other party's meters or by other mutually satisfactory means.

Section 5.2—Meter Reading: For billing purposes, all meters shall be read at 4:00 o'clock p.m. on the last day of each month, or as near thereto as practicable. Copies of recordings, kwhr consumptions and maximum kw demands shall be assembled for billing and record purposes.

ARTICLE VI

ELECTRIC GENERATING CAPACITY

Section 6.1—Electric Generating Capacity to be Provided: In consideration of the relative size and configuration of each of the systems, the CITY agrees that it will provide reserve capacity in such amount that its power supply will at all times be equal to at least 125 per cent of the CITY'S actual peak load requirements. It is expressly understood that deliveries under Service Schedule C shall not be used in calculating the aforementioned reserve capacity requirements.

Section 6.2—Generating Capacity Additions by City: It is mutually agreed that the CITY may schedule its generating capacity additions to be as large and economical as it may independently determine.

ARTICLE VII

BILLING AND PAYMENT

Section 7.1—Presentation and Payment: Each of the parties shall submit to the other, as promptly as possible after the first of each month, written bills for the respective amounts due it under the terms of this CONTRACT for the preceding calendar month and all such bills shall be due and payable within ten (10) days.

Section 7.2—Disputed Bill: In case any portion of any bill be in bona fide dispute, the undisputed amount shall be payable when due; and the remainder, if any, upon determination of the correct amount shall be paid promptly after such determination.

ARTICLE VIII

FORCE MAJEURE AND INDEMNIFICATION

Section 8.1—Force Majeure: In case either party hereto should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon said parties by this CONTRACT by reason of or through strike, stoppage in labor, failure of contractors or suppliers of materials, riot, fire, flood, ice, invasion, civil war, commotion, insurrection, military or usurped power, order of any Court granted in any bona fide adverse legal proceedings or action, order of any civil or military authority either de facto or de jure, explosion, act of God or the public enemies or any cause reasonably beyond its control and not attributable to its neglect; then, and in such case or cases, such party shall not be liable to the other party for or on account of any loss, damage, injury, or expense resulting from or arising out of

such delay or prevention; provided, however, that the party suffering such delay or prevention shall use due and, in its judgment, practicable diligence to remove the cause or causes thereof; and provided, further, that neither party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such a settlement seems advisable.

Section 8.2 — Responsibility and Indemnification: Each party hereto expressly agrees to indemnify and save harmless and defend the other against all claims, demands, costs, or expense for loss, damage, or injury to persons or property, in any manner directly or indirectly connected with or growing out of the generation, transmission, or use of electric capacity and energy on its own side of the point of ownership hereunder unless such claim or demand shall arise out of or result from the negligence or willful misconduct of the other party, its agents, servants, or employees; provided, however, that neither party hereby assumes responsibility for damage or injury to employees of the other party.

ARTICLE IX

MISCELLANEOUS

Section 9.1 — Regulation: In the event this CONTRACT is changed or modified by any regulatory agency or authority, either party, if adversely affected to a material extent, shall have the right to terminate this CONTRACT on six (6) months' written notice to the other party.

Section 9.2 — Waivers: Any waiver at any time by any party hereto of its rights with respect to the other party or with respect to any matter arising in connection with this CONTRACT shall not be considered a waiver with respect to any subsequent default or matter.

Section 9.3 — Successors and Assigns: This CONTRACT shall inure to the benefit of and be binding upon the parties hereto only, and their respective successors and as-

signs, and shall not be assignable by either party without the written consent of the other party except as to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor.

Section 9.4 — Notices: Any notice, demand, or request required or authorized by this CONTRACT shall be deemed properly given if mailed, postage prepaid, to Florida Power Corporation, St. Petersburg, Florida, in the case of the CORPORATION; and to the Electric Utilities Department, City of Gainesville, Florida, in the case of the CITY; or to such other person as may be designated by the CORPORATION or by the CITY as hereinafter provided. The designation of the person to be notified or the address of such person may be changed by the CORPORATION or the CITY at any time, or from time to time, by similar notice.

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER CORPORATION

By .....
President

Attest:

By .....
Secretary

CITY OF GAINESVILLE, FLORIDA

By .....
Mayor

Attest:

By .....
Clerk

SERVICE SCHEDULE A

EMERGENCY ELECTRIC SERVICE

IT IS AGREED this Service Schedule A will be effective under, and a part of, the contract dated ..... for interconnection and electric service supplied between the Florida Power Corporation and the City of Gainesville, Florida, hereinafter referred to as the "CONTRACT".

Section A 0.1 — Term: The term of this Service Schedule A shall be concurrent with and identical to the term stipulated in Section 1.1 of this CONTRACT.

Section A 0.2 — Emergency Electric Service: Emergency electric service, for the purpose of this schedule, shall mean emergency power supplied by either party for use under emergency conditions, when such party is temporarily unable to supply its required power and energy from normally available sources. It is agreed that a condition of deficiency in the CITY'S power supply occasioned by shortage of system facilities, water, fuel or other supplies, which has resulted from failure of the CITY to follow recognized good engineering practice, shall not be considered an emergency condition for the purposes of this Service Schedule A but shall, instead, constitute a reduction in the CITY'S recognized power supply.

It is understood and agreed that the power and energy received by either party under emergency conditions when the period of such receipt of power and energy is less than sixty (60) minutes shall be classified as inadvertent interchange of energy and shall be treated as set forth in Section 4.2, Article IV, of the CONTRACT, of which this Service Schedule A is a part.

If, as determined by either party, such party is able to continue delivery of power for more than sixty (60) minutes, all of the power and energy taken after said sixty (60) minute period shall be treated as scheduled electric service, as provided for under Service Schedule B.

Section A 0.3 — Payment for Emergency Electric Service: As consideration for: (1) The CORPORATION being obligated under this CONTRACT to supply instantaneous emergency power to the CITY, the CITY agrees to pay the CORPORATION, in addition to any other rates and charges stipulated in this CONTRACT, an annual charge of $3.08 per kw for 100 per cent of the maximum net generating capability of the CITY'S largest generating unit.

(2) As consideration for the CITY supplying emergency power to the CORPORATION when requested and if available, such service shall be scheduled electric service and the CORPORATION agrees to pay the CITY as provided for under Service Schedule B, Section B 0.4 (2).

Section A 0.4 — Emergency Energy: Energy supplied under emergency conditions shall be returned by the receiving party under the conditions set forth in Section 4.2 of the CONTRACT.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule A to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER CORPORATION

By .....
President

Attest:

By .....
Secretary

CITY OF GAINESVILLE, FLORIDA

By .....
Mayor

Attest:

By .....
Clerk

SERVICE SCHEDULE B

SCHEDULED ELECTRIC SERVICE

IT IS AGREED this Service Schedule B will be effective under, and a part of, the contract dated ..... for interconnection and electric service supplied between Florida Power Corporation and the City of Gainesville, Florida, hereinafter referred to as the "CONTRACT".

Section B 0.1 — Term: The term of this Service Schedule B shall be concurrent with and identical to the term stipulated in Section 1.1 of the CONTRACT.

Section B 0.2 — Scheduled Electric Service During Maintenance of Facilities: Scheduled electric service is capacity and energy arranged in advance in either direction.

Section B 0.3 — Scheduled Electric Service Commitments: Each scheduled electric service commitment shall be evidenced by duplicate copies of a letter of commitment, which document shall provide appropriate space thereon for acceptance.

Such records shall be made in all cases including those involving scheduled electric service initiated because of emergencies as provided for under Schedule A.

Section B 0.4—Payment for Scheduled Electric Service:

(1) The CITY shall pay for scheduled electric power and energy monthly at the following daily charges:

DEMAND—$0.0833[3] per kw for each kw of scheduled demand or actual recorded demand, whichever is greater; PLUS:

ENERGY—at the rate of four (4) mills per kwh or the Seller's average fuel cost plus ten per cent (10%) whichever is less at the tie.

---

[3] Changed to $0.05 per kw in Brief filed with Presiding Examiner.

(2) The CORPORATION shall pay for scheduled electric power and energy monthly at the following daily charges:

DEMAND—$0.05 per kw for each kw of scheduled demand or actual recorded demand, whichever is less; PLUS

ENERGY—at the rate of four (4) mills per kwh or the Seller's average fuel cost plus ten per cent (10%) whichever is less at the tie.

Section B 0.5—Actual Recorded Demand: Actual recorded demand shall mean the kwh per one hour as determined by the differences between consecutive hourly readings of the billing kwh meter. It is agreed telemeter readings as received at the Dispatching Offices may be used for this purpose.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule B to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER CORPORATION

By .....
President

Attest:

By .....
Secretary

CITY OF GAINESVILLE, FLORIDA

By .....
Mayor

Attest:

By .....
Clerk

SERVICE SCHEDULE C

ENCONOMY ENERGY ELECTRIC SERVICE

IT IS AGREED this Service Schedule C will be effective under, and a part of, the contract dated ..... for interconnection and electric service between the Florida Power Corporation and the City of Gainesville, Florida, hereinafter referred to as the "CONTRACT".

Section C 0.1—Term: The term of this Service Schedule C shall be concurrent with and identical to the term stipulated in Section 1.1 of the CONTRACT.

Section C 0.2—Economy Energy Electric Service: Economy energy electric service as used herein shall mean electric energy which one party (Seller) can produce at a cost which is lower than the cost the other party (Buyer) would incur by producing equivalent energy from other available sources, and which energy the Seller is willing and able to sell and deliver to the Buyer.

It is understood and agreed that a party is entitled to purchase economy energy only at such times that such party has alternate dependable capacity including adequate reserves that could otherwise be used.

Section C 0.3—Purchase and Sale of Economy Energy: At any time that either of the parties desires to purchase economy energy and the other party is willing and able to supply such economy energy, the two parties may effect such purchase and sale under the provisions of this Service Schedule C. Such purchase and sale shall be entirely voluntary on the part of each party. The price to be paid by the Buyer to the Seller shall be the price calculated at the time of such agreement in accordance with Section C 0.4 hereof.

If an emergency should occur on either system during the sale of economy energy, the Buyer shall as soon as possible supply his energy requirements and the specific agreement for the sale and purchase of economy energy shall be terminated.

Section C 0.4—Rates and Compensation: Payment for energy scheduled hereunder shall be calculated in accordance with the following rate:

$$\text{Rate per kwhr} = \frac{A + B}{2}$$

when:

A = The cost of supplying energy involved from resources of the Buyer.

B = The cost of supplying energy involved from resources of the Seller.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule C to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER CORPORATION

By .....
President

Attest:

By .....
Secretary

CITY OF GAINESVILLE, FLORIDA

By .....
Mayor

Attest:

By .....
Clerk

SERVICE SCHEDULE D

FIRM INTERCHANGE ELECTRIC SERVICE

IT IS AGREED this Service Schedule D will be effective under, and a part of, the contract dated ..... for interconnection and electric service between the Florida Power Corporation and the City of Gainesville, Florida, hereinafter referred to as the "CONTRACT".

Section D 0.1—Term: The term of this Service Schedule D shall be concurrent with and identical to the term stipulated in Section 1.1 of the CONTRACT.

Section D 0.2—Firm Interchange Electric Service: Firm interchange electric service shall mean capacity and the accompanying energy whereby one party (Seller) shall deliver to the other party (Buyer) after commitment certain quantities of capacity and the accompanying energy provided, however, Seller shall neither commit for the delivery of capacity in excess of one-half the Buyer's peak load forecast for the commitment period, nor for less than 10,000 kilowatts. The Buyer will normally supply to the Seller during the commitment period an advance daily schedule of capacity and accompanying energy to be delivered hereunder. The Seller shall make every effort to conform with the Buyer's daily schedules up to the amount of the firm interchange electric service commitment.

Section D 0.3—Condition: It is a condition of this Service Schedule D that firm interchange electric service may be committed by the CITY to the CORPORATION only in such amount that the CITY'S total remaining net capacity available to its system is equal but not less than 135% of its expected maximum sixty (60) minute integrated power requirement, expressed in kilowatts, during the term of the commitment.

The time interval for determining a sixty (60) minute integrated power requirement shall be between the clock hours.

Section D 0.4—Firm Interchange Electric Service Commitments: Each party will determine its needs for firm

interchange electric service from time to time and will negotiate with the other party for such service, and to the extent such service can be made available, a commitment may be made between the parties hereto for such service.

Each firm interchange electric service commitment period shall be not less than twelve (12) months nor more than thirty-six (36) months. Such commitment shall be evidenced by duplicate copies of a letter of commitment signed by both parties.

Section D 0.5—Payment for Service: For firm interchange electric service made available from one party to the other, the Buyer shall pay to the Seller each month an amount for capacity demand and energy computed at the following monthly charges:

A. DEMAND

(1) For firm interchange electric service made available by the CITY to the CORPORATION, the CORPORATION shall pay to the CITY a demand charge equal to $..... per kilowatt for each kilowatt of billing demand. (2) For firm interchange electric service made available by the CORPORATION to the CITY, the CITY shall pay to the CORPORATION a demand charge equal to $1.35 per kilowatt for each kilowatt of billing demand.

B. ENERGY

The energy charge shall be negotiated for each firm interchange electric service commitment, and such charges shall be set forth in the letter of commitment referred to in Section D 0.4.

Billing demand hereunder shall be the firm interchange electric service capacity commitment in kilowatts (kw), unless modified as set forth in Section D 0.6. Actual hourly demand shall be recorded by appropriate meters, and is defined as the kilowatt hours per one (1) hour, as determined by the differences between consecutive hourly readings of the billing kilowatt hour meter. It is agreed tele-

metered readings as received in the Dispatching Offices may be used for this purpose. The time intervals for determining the sixty (60) minute integrated power demand shall be between the clock hours.

Section D 0.6 — Billing Demand Adjustments Within Contract Period: If at any time the Buyer is receiving power under the provisions of Section D 0.2, and the actual supply of power to the Buyer exceeds the specified billing demand up to five per cent (5%) because of limitations of the control system to accurately control the flow of power to the exact amount specified, no demand charge for such excess power flow shall be made. If, however, the Buyer imposes a demand on the Seller in excess of the specified billing demand above five per cent (5%), a new billing demand is thereby established, and the Buyer shall pay for such greater demand only for the billing month during which such greater demand was taken. The demand of the Buyer in excess of the then effective billing demand shall be exempt from this adjustment in billing demand if such excess is caused by an emergency as defined in Service Schedule A of the CONTRACT, in which case the excess power, if made available to the Buyer, shall be billed in accordance with the provisions of said Service Schedule A.

In the event the parties have reached an agreement upon the terms of a commitment under this Service Schedule D and the Buyer requests the Seller to deliver power up to the amount of the then established billing demand, which power, after reasonable notice from the Buyer to the Seller, Seller fails to make available for reasons other than the uncontrollable forces as defined in Section 8.1, Article VIII, of the CONTRACT, or malfunction of system facilities as herein provided, the billing demand shall be adjusted downward to a lesser figure representing the quantity which the Seller is willing and able to make available. Such downward adjustment shall be made retroactively from the beginning of the term of the commitment and shall continue to the end of the term of the commitment. It is the intent of the parties that malfunctions of system

facilities shall be considered reasonably beyond the control of either party. In the event of such malfunctions to the Seller's equipment during the term of a firm interchange electric service commitment, if, within four (4) hours after such malfunction, the Seller is unable to deliver power up to the amount of the firm interchange electric service commitment by using all the remaining facilities available, then the billing demand for that current month shall be adjusted downward to a lesser figure representing the quantity which the Seller is able to make available. If, within four (4) hours after a malfunction, the Seller is able to resume delivery of the full amount of the firm interchange electric service commitment, then there shall be no adjustment to the billing demand.

If, in any month during the term of a firm interchange electric service commitment, there are circumstances to cause more than one adjustment to the billing demand, that circumstance which results in the lowest billing demand shall be the one upon which the billing demand adjustment shall be based.

Section D 0.7 — Tax Adjustment: To the base demand and energy charges shall be added the applicable proportionate part of any taxes and assessments (except Federal Income Taxes), imposed by any governmental authority in excess of those in effect as of the date of the CONTRACT, which are assessed on the basis of meters or customers, or the price of or revenue from electric energy or services sold, or the volume of energy generated or purchased for sale or sold. In the event either party pays a gross receipts tax to the State of Florida under Section 203.01, Florida Statutes, in respect of interchanges hereunder, such party making such tax payment shall be fully reimbursed in such manner by the party purchasing the electric energy.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule D to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER CORPORATION

By .....
President

Attest:

By .....
Secretary

CITY OF GAINESVILLE, FLORIDA

By .....
Mayor

Attest:

By .....
Clerk

Nos. 464 and 469

Supreme Court,
FILED
JAN 27 19
ROBERT SEAVER,

IN THE

Supreme Court of the United States

October Term, 1970

GAINESVILLE UTILITIES DEPARTMENT,
CITY OF GAINESVILLE,

Petitioners,

v.

FLORIDA POWER CORPORATION.

FEDERAL POWER COMMISSION,

Petitioner,

v.

FLORIDA POWER CORPORATION.

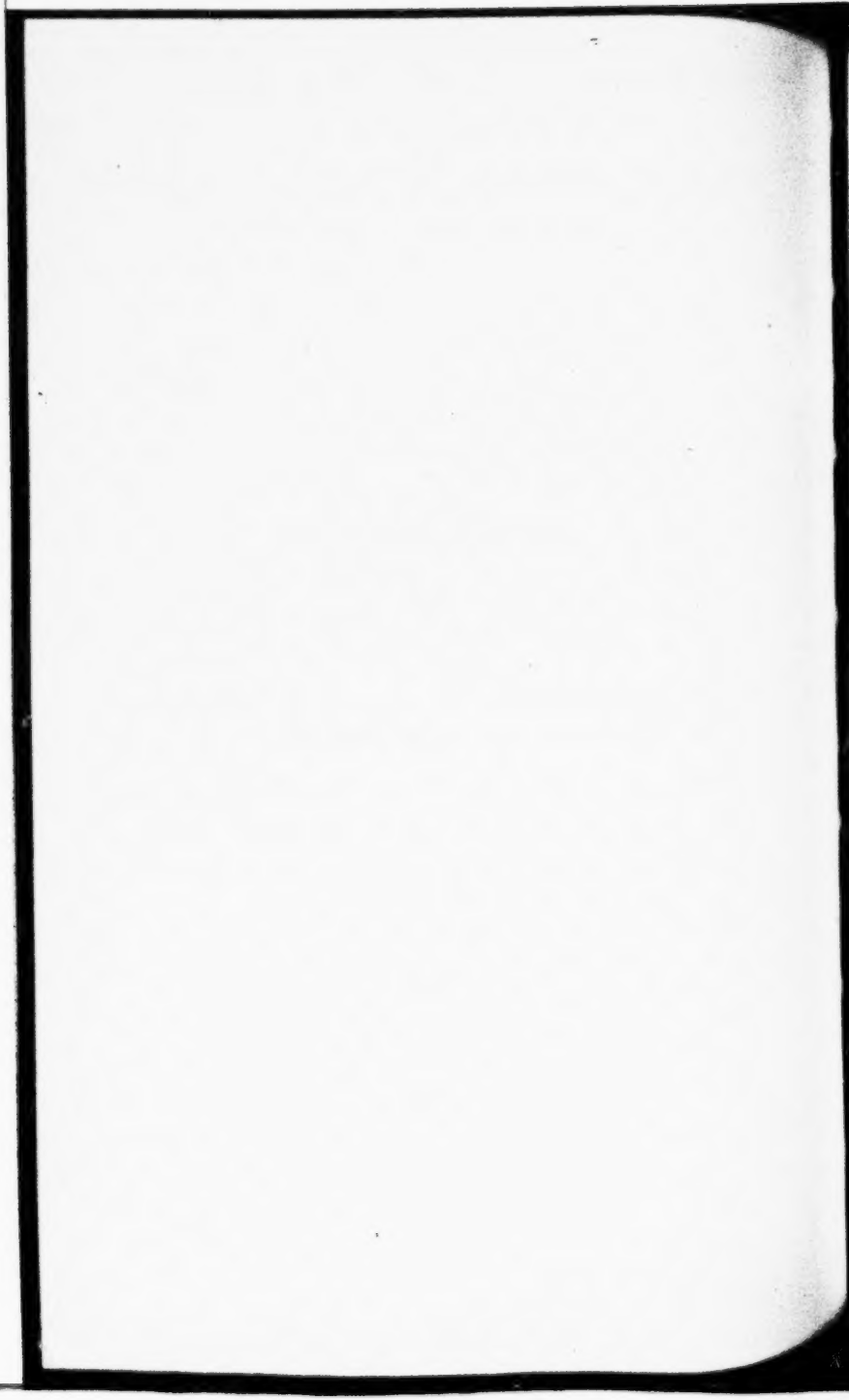
ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR *AMICI CURIAE*,

American Electric Power Service Corporation
Duke Power Company
Middle South Utilities, Inc.
New England Power Company
Northeast Utilities
Ohio Edison Company
Pacific Gas and Electric Company
Southern California Edison Company
Virginia Electric and Power Company

THOMAS M. DEBEVOISE
Shoreham Building
Washington, D.C. 20005

January, 1971



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Supreme Court of the United States

October Term, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT,
CITY OF GAINESVILLE,

Petitioners,

v.

FLORIDA POWER CORPORATION.

No. 469

FEDERAL POWER COMMISSION,

Petitioner,

v.

FLORIDA POWER CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR *AMICI CURIAE*,

American Electric Power Service Corporation
Duke Power Company
Middle South Utilities, Inc.
New England Power Company
Northeast Utilities
Ohio Edison Company
Pacific Gas and Electric Company
Southern California Edison Company
Virginia Electric and Power Company

Question Presented

Whether the Federal Power Commission may require that the customers of one electric utility system "must bear the

allocated fixed cost" of providing "extremely valuable" service to another electric utility system, notwithstanding the fact that the Act requires, as a matter of law, that the costs of the utility supplying such valuable service shall be "apportioned" and that it shall receive "the compensation or reimbursement reasonably due" it.[1]

The Interest of the *Amici Curiae*

The *amici curiae* believe that the Court below properly held that the Commission had failed to make provision for the "compensation or reimbursement reasonably due" Florida Power and that the case should be remanded to the Commission. They, therefore, urge that the decision of the Court below be affirmed.

The Commission purports to rely not upon its own expertise but upon what it alleges is "the generally prevailing practice in the industry" (Commission brief, at 12).[2] The *amici curiae* presenting this brief are electric utility systems which operate in virtually all areas of the country and serve approximately 40,000,000 people. Each of the systems has multiple electrical interconnections between its

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[1] The first two quotations in the "Question Presented" are from the holding of the Court of Appeals for the Fifth Circuit (App. 502-3), 425 F.2d 1196, 1203, which speaks solely in terms of the Federal Power Commission having failed to take into account *costs* other than direct (or incremental) costs of Florida Power as a part of the compensation reasonably due Florida Power. The second two quotations are from section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b) which establishes the standard for compensation.

[2] Elsewhere the Commission brief states:

"In contested interconnection cases, therefore, it is appropriate that Commission decisions establishing compensation terms take into account the terms of current interconnection arrangements negotiated at arm's length." (at 19) We agree. But this is precisely what the Commission failed to do in this case.

facilities and facilities of other electric utility systems which are governed by contracts specifying the terms and conditions of interconnected operation. The program of interconnection by electric utilities has been undertaken under the express policy of Congress set forth in section 202(a) of the Federal Power Act, 16 U.S.C. 824a(a), to foster and encourage "the voluntary interconnection and coordination of facilities for the generation, transmission and sale of electric energy." As a result of the program of voluntary interconnection of electric utility systems, approximately 99% of the people in the United States are now served by electric utilities which have interconnections with one or more other electric utilities governed by thousands of interconnection agreements.

In contrast to section 202(a), section 202(b) of the Federal Power Act, 16 U.S.C. 824a(b), the authority upon which the Commission relies in this case, provides that the Commission may order a public utility to interconnect its facilities with those of another system, but only upon application therefor and only if the Commission finds no "undue burden" will be created on the utility being required to interconnect. Under the section, the Commission may also prescribe the terms and conditions to govern the interconnection, "including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them." Of the approximately two hundred million people in the country receiving electric service, at most a few thousand may be served by systems with which the Commission has ordered a public utility to interconnect upon terms and conditions specified by it under section 202(b).

So successful and universal a program of voluntary interconnection has only been achieved because the economic arrangements underlying such interconnections have provided a reasonable apportionment of costs and reasonable

compensation or reimbursement (in money or services) for the services supplied. By seeking to impose terms and conditions which do not meet the statutory test of reasonable compensation, the Commission's order, if permitted to stand, would seriously impede the continued operation of voluntary interconnections of the industry as a whole (of which the *amici curiae* are a substantial part) and frustrate the Congressional mandate in both section 202(a) and section 202(b).

Statement of the Case

Florida Power is an electric utility corporation which serves 370,000 customers in the west, northwest and central sections of Florida (App. 354). In order to reduce to a minimum the amount of electric generating capacity required to provide a continuous power supply and thus to reduce the capital and operating costs associated with constructing and operating generating facilities, Florida Power has constructed a very substantial transmission system within its service area which, together with its numerous interconnections with other utility systems, permits the power requirements of particular regions in its service area to be supplied from a multiplicity of different sources.

To achieve this intended result—i.e., to have transmission capability available in a fraction of a second for delivery to a particular load center from one source when another source is forced out of service, Florida Power must provide a transmission system much larger than that which might be thought to be required for "normal" operating conditions.[1] The allocated cost of the essential reserve capacity

[1] The Commission itself has recognized the necessity for maintenance of such "margins of transmission capability". See, *post*, at 22.

in this transmission system at the time of Florida Power's peak load in 1970 (60% of the total cost of its transmission system) was estimated to be approximately $3.20 for each kilowatt of load Florida Power would supply (App. 192, Ex. 30). Power at 69 kv from three different directions is supplied from this transmission system to Florida Power's Gainesville substation which serves load in and around the City of Gainesville (App. 161-2).

The City of Gainesville through the Gainesville Utilities Department operates an electric utility system serving approximately 17,000 retail customers in the city and adjacent portions of Alachua County, Florida. Gainesville's electric operation was previously isolated from other electric utility systems. In order to maintain a power supply sufficient, while so isolated, to meet its requirements in the event of the single contingency of forced outage of its largest generating unit, Gainesville had to maintain reserve electric generating capacity equal to at least the capacity of its largest unit, 50 megawatts (App. 223, 224).

The Federal Power Commission, by order issued in November 1968 (App. 352-381), directed Florida Power to permit Gainesville to interconnect its system to that of Florida Power, not at Florida Power's substation in Gainesville where voltage is 69 kv, but at Florida Power's Archer substation some miles away where a north-south 240 kv backbone transmission line of Florida Power is tapped (App. 375). It was recognized that, upon interconnection, the supply of power by Florida Power to Gainesville from its backbone transmission system in the event of a forced or planned outage of equipment on the Gainesville system would be "inevitable, unavoidable and instantaneous" at all times (App. 188, 189). For this reason, the Commission directed that, after interconnection, Gainesville need provide electric generating capacity only

15% in excess of its estimated load,—*less than one third its previous requirement for reserve capacity* equivalent to the size of its largest unit (App. 444, 445). Further, it was recognized that the interconnection of the Gainesville system at Archer substation would play no role in strengthening Florida Power's service in and around the City of Gainesville from Florida Power's Gainesville substation, if such service in fact needed strengthening (App. 79, 80).

The Federal Power Commission provided that, upon interconnection, Gainesville should reimburse Florida Power for the allocated annual costs associated with Florida Power's having to provide frequency regulation through the interconnection for Gainesville (App. 378). But the Commission made no provision for Gainesville to reimburse Florida Power for any part of Florida Power's cost of maintaining the standby capacity instantaneously available to Gainesville at all times from the Florida Power backbone transmission system.[1]

Florida Power had asked that Gainesville share pro rata with Florida Power's own customers the costs of the transmission aspects of the standby capacity service, to the extent of the capacity in Gainesville's largest unit, so that Gainesville and Florida Power's other customers would each pay annual costs of $3.08 per kilowatt for such service based on 1970 load projections (App. 194). Terms ordered by the Commission to govern other services gave Gainesville the benefit of the low incremental costs of energy from Florida Power's large efficient power supply system, essentially as Florida Power itself had proposed. It is undisputed that nothing in the other terms and conditions provides any compensation to cover transmission fixed costs.

Upon appeal by Florida Power, the Court of Appeals for the Fifth Circuit reversed the Federal Power Com-

[1] The Commission's examiner had recommended compensation by Gainesville to Florida Power, although not in the precise form proposed by Florida Power.

mission on the ground that the Commission had failed to provide the "reasonable compensation" by Gainesville to Florida Power to which the latter was entitled under the Act for the cost of the capacity standby service which Florida Power would be required to provide upon interconnection of the two systems. The Court noted that, if the Federal Power Commission Order were allowed to stand, the allocated fixed cost of this service to Gainesville would have to be borne by Florida Power's customers, and "[T]hey are entitled to not have to carry the entire responsibility for providing an extremely valuable service" (App. 502-3). Gainesville had initiated the proceeding to obtain this "valuable service."

ARGUMENT

I.

The Commission equated the statutory requirements that (i) costs be "apportioned" and (ii) the supplier receive "the compensation or reimbursement reasonably due" it, as meaning that the recipient of a valuable service need pay only the direct, immediate *incremental* cost to the supplier of furnishing such service. The Court below properly held that the Commission erred in doing so and that the Commission must provide "reasonable compensation" to the supplier, in a manner to be determined by the Commission.

It is undisputed that Florida Power has "costs"—substantial "costs"—involved in providing a backbone transmission network. (App. 144).

It is also undisputed that Gainesville will, by reason of the interconnection, share in the benefits that such Florida Power costs will make available. Such benefits to Gainesville will include (1) greatly increased reliability in

service to its own customers (App. 56), (2) an immediate reduction in the level of its generating reserve requirements (Gainesville's required generating reserve, at its 1970 load level, will be immediately reduced from 50 MW to 15 MW) and (3) an annual saving of approximately $520,000 (App. 49; Exhibit 81, introduced by Gainesville at R. 1148).

The significance of these benefits to Gainesville was agreed upon by all parties to the proceeding. All witnesses agreed that, upon interconnection, standby capacity equal to Gainesville's entire average load would be instantaneously available at all times to Gainesville from Florida Power. All witnesses agreed, also, that, upon interconnection, Gainesville would no longer be compelled to maintain reserve generating capacity equal to the largest Gainesville unit (50 MW).

Given these facts, there can be no question about the statutory right of Florida Power to reasonable compensation or reimbursement for the Florida Power costs properly apportionable to Gainesville.

The Commission attempts to portray Florida Power as seeking a share of the very large benefits that Gainesville receives from the interconnection. That is not the situation at all. If Florida Power were seeking to share in Gainesville's benefits, rather than merely to receive a pro rata share ($154,000) of Florida Power's apportioned costs, Florida Power's request for payment by Gainesville would have been much larger (App. 193).

Once these elements are recognized, it becomes clear that the real issue is, as the Court below demonstrated, whether Gainesville is providing something of sufficient value to Florida Power to constitute the reasonable reimbursement or compensation to which Florida Power is entitled. The fact is that Gainesville will not provide, and cannot pro-

vide, services of any significant value to Florida—let alone services of sufficient value to meet the statutory standard of "reasonable" compensation or reimbursement.

What are the benefits to be provided by Gainesville to Florida Power upon which the Commission relies? As the Court below properly found, they are illusory and speculative.

The Commission claims as benefits to Florida Power the generating capacity that will be provided by Gainesville. A Commission staff witness purported to find such value by a mathematical exercise in which he assumed that Gainesville would have a higher level of generating reserve capability than Florida Power. But the Commission order only requires Gainesville to maintain the same level of generating reserve as Florida Power, and this reduction in necessary generating reserve is precisely one of the benefits Gainesville was seeking.

The simple truth is that many of Gainesville's generating units are so small[1] and so antiquated that they should not be operated and, indeed, for the most part will not be operated (App. 92-96; 206). They should be retired from service.

Commission staff witnesses ascribed increased reliability to Florida Power from the continuous operation of these small units of Gainesville (App. 229, 438).[2] The Commission staff witness also ascribed spinning reserve benefits to Florida Power from Gainesville. But Gainesville can only pro-

[1] 12.6 MW, 5 MW, 1 MW.

[2] The Court below pointed out in this connection:

"The Presiding Examiner concluded that Gainesville could contribute only 6 mw, 3 mw, and 2.5 mw to Florida Power's system reliability. It seems clear that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages of more than 400 mw. Moreover Florida Power's backbone transmission network has so many power sources more efficient and economical than Gainesville's small generators it is totally unrealistic to consider the City's system a significant power source." (App. 494 for 6)

vide spinning reserve at all times if it continues to operate the small and inefficient generating units that are made unnecessary by the fact of interconnection and which Gainesville's own witnesses admitted would in fact be shut down. Staff recognized that the units would not be operated and that there would be no spinning reserves on Gainesville's system at times (App. 474). To describe Gainesville's units under these circumstances as providing a "fast rate of response" is to deny an essential purpose and intended result of the interconnection. Gainesville is, in fact, anxious to discontinue operation of the type of unit that the great bulk of the industry ceased operating decades ago.[1]

Even the Commission's claim that Gainesville will provide added reliability to Florida Power in an area where Florida Power has no generating facilities does not withstand analysis. The new interconnection is not in the Gainesville area, but some miles away at Archer. Through this interconnection at Archer, Gainesville can provide no added reliability to the Florida Power facilities in the Gainesville area. A Gainesville witness specifically noted that if Florida Power wished additional reliability in the Gainesville area, Florida Power should seek and pay for an interconnection with Gainesville at Florida Power's Gainesville substation (App. 79, 80). Florida does not need, nor can it justify, a fourth supply of power to this substation (App. 162-163).

For these reasons, the Court below properly found that the benefits to Florida Power that the Commission attributed to Gainesville were non-existent or illusory.

In the Commission's brief, at page 9, it is stated that the Commission found that neither Florida Power nor other

[1] Another Presiding Examiner recently suggested, in his recommended decision, issued January 14, 1971, in *Village of Elbow Lake, Minnesota* v. *Otter Tail Power Corp.*, Docket No. E-7278, that a requirement that a public utility give capacity credit, in an interconnection ordered under section 202(b), for municipally-owned small generating units regardless of the practical value of such units, violates by indirection the provisions of section 202(b) that the Commission may not thereunder require a public utility to enlarge its generating facilities (at page 19).

power companies had imposed standby charges comparable to those being sought from Gainesville in any contracts covering voluntary interconnections. The reference is to the Commission's Opinion at App. 360, n. 3, which, itself, makes further reference to the Staff's review of pooling agreements and bilateral arrangements.

Staff's review of bilateral arrangements is limited to the statement that the small systems listed in its Exhibit 99 do not "pay an annual transmission charge similar to the $3.08 per kw per year recommended by [Florida Power]." (App. 441). Exhibit 99 lists a total of only 23 agreements, including one proposed agreement, which comprise *some* of the contracts between only seven named public utilities and small systems[1]. Staff's most extensive discussion of a particular formal pooling agreement concerns that of the PJM pool (App. 452, 453).

This evidence is, of course, extremely limited, but, even so, it shows that it is industry practice to provide compensation in money or services between systems which have an economic equivalent to the capacity standby charge proposed by Florida Power.

The terms and conditions of an interconnection agreement are a package and an imbalance in contribution among systems in one phase may be compensated for by an offsetting imbalance of obligations in another phase. For instance, disparate power supply reserve requirements in an interconnection agreement may cover an imbalance in transmission facilities of value to the interconnected systems. In this record it is pointed out that one of the interconnected Florida systems agreed to maintain a power supply reserve requirement larger than the other systems to make up for some lack of mutuality in other aspects of its interconnected system operation (App. 167).

Where all enumerated services are provided for at cost and there is a lack of mutuality in power supply standby

[1] The Commission has elsewhere described the inventory of some 3,600 systems in its *National Power Survey* (1964).

services, it is not at all unusual to specifically provide a charge for such service.

In reviewing any interconnection agreement, a knowledge of the particular systems is necessary to understand their mutuality. Also, all of their terms must be read before any conclusions are drawn as to the purport of the instrument.[1] The Long Island Lighting Company agreement with the Village of Freeport, New York, for instance, is listed in Exhibit 99 as an example of an interconnection agreement which does not provide standby transmission charges. It should be recognized, however, that, while there is no charge for standby service as such, provision is made for emergency capacity to be supplied by Long Island in the event of failure of the Village's equipment at the rate of 20 cents per kilowatt per day or fraction thereof. In the event of an outage of a Village generating unit of more than a few days, the charges per kilowatt could equal or exceed those proposed for Gainesville. Such a provision, of course, is an alternative to a standby transmission service charge.

Rate Schedule No. 55 of Kansas City Power and Light Company (Rate Schedules 54 and 56 are listed on Exhibit 99) provides that the firm generating capacity of the City of Ottawa, Kansas, system is to be considered its total generating capacity "less the number of kilowatts equal to its largest single generating liability." Provision is made for providing "insured reserve" capacity service to the City at $9.50 per kilowatt year. This provision also is an alternate for transmission standby charges.

A good example of a capacity standby charge which is expressed as directly related to transmission facilities is to be found in Article IV of contracts between the United

[1] A Staff witness noted: " . . . you have to keep in mind all of the services and all of the benefits and all of the detriments throughout the totality of the arrangement and I think that any one particular service schedule or service to be rendered has to be viewed in the light of the total or complete arrangement". (App. 473)

States of America, itself, and certain systems in Arkansas and Missouri, generally comparable to the Gainesville system. The eight customers with such service in 1967 are listed in the Senate Hearings on Public Works Appropriations, H.R. 17787, 89th Congress, 2d Session, Part III, at 672. Five potential customers under negotiation for standby service are also listed. The provisions for standby service in Article IV of these contracts (see, for instance, Contract No. 14-02-0001-1214 between the Southwestern Power Administration with the City of Kennett, Missouri) set forth a "standby service facility charge" in addition to payments for actual use of the standby service. The provision reads as follows:

> Section 6. *Standby Service Facility Charge.* It is recognized that in order to deliver, receive and exchange power and energy as provided under this Article IV [Standby Service by SPA], certain expenses and costs have been and will be incurred by SPA in connection with the construction, maintenance, operation, and replacement of transmission and related facilities. As consideration to SPA for the construction, maintenance, operation, and replacement of such transmission and related facilities, Kennett shall pay to SPA a Standby Service Facility Charge computed under the formula—
>
> $$SSFC = \$1.20 \times (LU - RP),$$
>
> with the factors defined as follows:
>
> SSFC = the total Standby Service Facility Charge to be paid by Kennett to SPA each Contract year.
>
> LU = the capability of the largest generating unit in the "Kennett Generating Plant" as set forth in Exhibit "3".

RP = the maximum number of kilowatts or Reserve Power which Kennett is obligated to furnish and deliver to SPA under Section 3 of this Article IV.

One-twelfth of such charge shall be paid by Kennett to SPA each month.[1]

In connection with the PJM pooling arrangements, the Staff witness testified as follows:

> "... Atlantic City and Delmarva, until quite recently, had to maintain higher reserves than the other P-J-M members did, and didn't have equal treatment as the other members. In the last few months a slight modification has been made to give them greater benefits. But the reason for that was that the members of P-J-M operate on a free flowing tie basis and have to have great transmission capacity internally and externally, and to the extent that they couldn't qualify as full members because of having transmission capacity that was less than what the other members were maintaining, they were treated as satellites, and still are until they can qualify as members." (App. 452, 453)

The Florida pool also operates on a free flowing tie basis (App. 159). Gainesville's proposed transmission and interconnection has not been coordinated with the transmission plans of Florida Power (App. 434)[2] or other system in the

[1] With the exception of the amount of the dollar rate and the factor RP, the formula is the same as that proposed by Florida. The factor RP gives recognition to the fact that the contract requires Kennett to provide SPA energy, in which SPA is deficient.

[2] Gainesville's plans may actually make it necessary for Florida to strengthen its transmission facilities at the Archer substation earlier than if there were no interconnection. (App. 231)

Florida Pool. And yet, the Commission would accord Gainesville much more favorable terms than the much larger Atlantic City and Delmarva systems receive under similar circumstances in the PJM pool.

For the Commission to be ignorant of standby charges in interconnection agreements, whether they are specifically so denominated or whether they are encompassed in the whole package of terms and conditions regarding an interconnection, transcends belief. The whole attempt in interconnection agreements is to achieve mutuality, and standby charges are an available tool to this end just as much as any other burden imposed by an interconnection agreement.

The requirement of section 202(b) that one utility may be forced to interconnect with another only if it receives reasonable compensation or reimbursement of its apportioned costs—i.e. of more than its direct and immediate *incremental* costs—is consistent with other provisions of the Federal Power Act. The same concept of a fair apportionment of costs and reasonable compensation therefor which is found in section 202(b) is also found in section 10(f) of the Federal Power Act. Section 10(f) requires payment by the non-federal owner of a benefited downstream hydroelectric project of a share of the cost of the headwater dam and reservoir which provides the benefits. *South Carolina Electric & Gas Co.* v. *Federal Power Commission,* 338 F. 2d 898 (CA 4, 1964). Such payment is required even though the headwater improvement was economically justified without consideration of such payments and in operation prior to the construction of the downstream project. *Columbia River Basin, Headwater Benefits Investigation,* 29 FPC 238 (1963); 31 FPC 1044 (1964); 33 FPC 300, 907 (1965); 35 FPC 212, 225, 1030 (1966).

II.

The Commission's repeated characterization of the standby capacity which Gainesville will receive from the interconnection as non-firm and as a "when, as and if available" service is a distortion of reality, refuted by the fact that the Commission felt able simultaneously to direct a reduction in the generating capacity which Gainesville will need to provide for itself to maintain reliability.

In its brief to this Court, at page 9, the Commission recites its finding that neither Florida Power nor other power companies had imposed standby charges comparable to those being sought from Gainesville in any contracts covering voluntary interconnections. This finding is evidently based upon Exhibit 99 and is discussed under Point I, above. Apparently in an attempt to sustain this finding, the Commission's brief, at page 23, seeks to distinguish the standby service for which charges are made by the Southeastern Power Administration of the U. S. Department of the Interior from the standby service which Gainesville will get from the Florida Power transmission system upon interconnection. The Commission's brief states in connection with the SEPA contracts that

> "... Standby charges are entirely appropriate in such cases since the capacity reserved must be made available to the purchasers on demand."[1]

The Commission's brief contrasts this situation with that in the current case by stating that Florida Power would be

---

[1] Contrary to the Commission's characterization of SEPA's standby service as "firm", the contracts, in subsection 2.3(c), provide: "Inasmuch as the same or portion of the same 100,000 kw of standby capacity ... has been sold for use by each of the three members of the Pool, ... first call ... shall go to the Pool member first experiencing an emergency outage ..." See 39 FPC 992 (1968)

under no firm obligation to provide power or reserves to Gainesville. At page 29, the Commission's brief picks up the point again, stating that Florida's only obligation is to permit Gainesville to draw power in emergencies

> ". . . to the extent, and only to the extent, that such emergency power is available on the interconnected network."

Such statements are a distortion of the facts of interconnected electric utility system operation. Because of the physical characteristics of Florida Power's system, under interconnected operation, energy will automatically flow to Gainesville, whenever Gainesville's generation is interrupted for any reason, without action on anyone's part (App. 188). Only in the event of *force majeure*, which could knock out any "firm" service, will Gainesville not receive the power that it requires from Florida Power.

If the foregoing were not the actuality, the Commission would have placed in jeopardy the electric service to all Gainesville's customers by directing that Gainesville be permitted to reduce its own capacity reserves to a level approximately one-third the size of its largest unit.

III.

The effect of the Commission's holding is that the Commission may grant to an electric utility the privilege of connecting its system to the transmission facilities of a second system and of receiving all the benefits which such facilities make available without sharing in any of its fixed costs or otherwise compensating the second system in a meaningful way. This is directly contrary to industry practice, will disrupt existing interconnection agreements and will interfere with industry efforts to achieve economies while maintaining the reliability of regional power supplies.

Recognizing that the great bulk of interconnections are the result of voluntary arrangements entered into at arms-length between utilities and that such voluntary arrangements provide the appropriate standard by which to determine the terms and conditions for interconnections which it should impose under section 202(b), the Commission then purported to ascertain what industry practice is. But here it was misled, apparently by the oversimplifications indulged in by the Commission witness and his skimpy sampling from the wealth of available data.

There is a substantial public interest to be served by the continued encouragement of voluntary interconnections. Such interconnections promote reliability and economy, and the Commission has recognized that an equitable apportionment of costs, between all who benefit from such costs, is a *sine qua non* of the broader pooling which, in other contexts, it purports to be encouraging. See *post*, at 21, 22.

But the Commission cannot have it both ways. If broader voluntary pooling with the resultant increased reliability and economy are the objectives—as we believe they are—, then the Commission must not distort the nature and effect of the industry practice by which the existing, broad voluntary pooling has been achieved. If, on the other hand, the Commission's objective is simply to relieve small systems from sharing any costs of the reliability provided by larger systems, the Commission should frankly admit that it is rejecting industry practice as its touchstone.

We choose to believe that the Commission simply did not know what it was doing here—that while it verbally accepted the principles by which voluntary interconnections have been established, its lack of detailed familiarity with the *application* of those principles caused it to reject in fact that which it espoused in form.

The Petitioners talk in terms of the standby equalization charge being a form of penalty to the last utility to join the interconnected systems. Nothing could be further from the fact.

The customers of the first two utilities to interconnect in a region initially bear the costs of such interconnection. Certain benefits flow to them from such investment. When those benefits are extended to the customers of a third utility, it is only right that the customers of the third utility either provide an equivalent substantive benefit to the customers of the first two utilities which interconnected, share the costs which made the benefits possible, or provide some combination of benefits and cost sharing as a means of effecting reasonable compensation.

This is not a new theory devised for this particular case. It is industry practice. It is fair and equitable to the customers of each system.

The Commission's brief at pages 21 and 22 evidently claims that the same rules do not apply to "sharing of transmission system responsibilities." The suggestion in the Commission's Brief is that under industry practice each system in a pool is held responsible solely for the costs of transmission facilities in its own service area. A good example directly to the contrary of the Commission's suggestion is the contract between the operating subsidiaries of the Southern Company system, which provide electric service in the states of Florida, Mississippi, Georgia and Alabama. The companies have been interconnected and have operated as a pool for many years; yet, when transmission facilities and interconnections with other utility systems are installed for the benefit of the pool, no matter which company installs, owns and operates the facilities, the other companies contribute to the costs of the facilities. In 1966, for example, Georgia Power extended a line from

its North Tipton substation 64 miles through Georgia to the Florida state line to interconnect with the line of Florida Power with which Gainesville also wishes to interconnect at the Archer Substation. The line provided pool benefits and its annual fixed charges have therefore been shared by all four of the subsidiaries, each operating in a different state. Southern System FPC Rate Schedule Nos. 34 *et seq.*

In the New England region currently, a 345 kv transmission line is being extended from Wiscasset, Maine, the site of a large atomic plant scheduled for 1972 service, to connect at the New Brunswick border with a 345 kv line of the New Brunswick Electric Power Commission. The transmission line will provide benefits to the entire New England region. In order to finance and support the line, a new company was formed, the Maine Electric Power Company, which is owned by the utilities in the State of Maine. All the major utilities in New England, from Connecticut north, however, have contracted with the new company to pay the annual costs of the line, not covered by revenues for use of the line, for the next 20 years. Revenues for firm power transactions over the line are anticipated to recover approximately 50% of the annual costs. The other 50% of the costs will be shared via dollar payments by the New England utilities in proportion to their size in order to achieve pool benefits of stability, emergency power supply, and for assistance in maintaining low generating reserve requirements.

The responsibility for the fixed costs of the 500 kv backbone transmission system of the Pennsylvania-New Jersey-Maryland pool is assigned one-third to system reliability and two-thirds to the delivery of the output of jointly-owned mine mouth generating stations to the load centers of the owners of the stations. The costs of the portion allocated to reliability is shared by all members of the pool in propor-

tion to size of load without regard to ownership of the transmission facilities. Payment for these shared costs is made in dollars.[1]

In cases where each system provides within its own service area the necessary transmission to support a pool, without specific compensation in the interconnection agreement package for the benefits which its facilities bring to the pool, it is normally because the investment in transmission facilities on the other systems or other benefits provided without compensation by such systems give mutuality to the agreement without any exchange of dollars. Where there is no mutuality, dollars are exchanged, as in the foregoing examples.

In the New England region, one of the suggestions which has heretofore met wide approval in connection with the proposed formation of a region-wide pool calls for all the costs of all the existing and future backbone transmission in the region, irrespective of ownership, to be shared in proportion to peak load by all electric utilities in the region.

Under industry practice, it is recognized that backbone transmission facilities provide pool benefits, and that their costs should be shared in services or dollars by the electric systems which benefit from them.

The Federal Power Commission purports to recognize the fact that small systems may not be able to provide services constituting adequate compensation for costs from which they benefit. In its publication, *Prevention of Power Failures, A Report to the President,* Volume I, at 39, it states:

[1] Of the eight non-affiliated and four affiliated companies comprising (or satellites to) the pool, only five own any appreciable share of the 500 kv transmission facilities and their ownership shares of such transmission facilities are not proportionate to their ownership shares in the jointly-owned generating stations or their relative peak loads. Seven of the companies in one case and nine in another participate in ownership of the jointly-owned generating stations. The Staff witness did not make those facts clear when he described the arrangement at App. 452.

> . . . Small systems participating in power pools or coordination agreements must expect to carry their share of responsibilities associated with interconnected planning and operation. Their generating capacity and operating reserves must be maintained and must be operated under standards and controls which are commensurate *in quality* with those of the larger systems. To the extent it may be physically impossible for a small system to fulfill all such obligations *in kind*, equalization should take the form of exchanging power or dollars among the systems.

At page 44 of the Report the Commission quotes from its Advisory Committee on the Reliability of Electric Bulk Power Supply, as follows:

> Transmission must be recognized as the principal medium for achieving reliability, both within a system and through coordination among systems. It is the cohesive force which ties together power systems. Cascading power failures are usually the result of insufficient capability within the transmission links of a system or group of systems to withstand the sudden demands placed upon them by reason of disturbances arising within or outside the system. In the interconnected networks, transmission has the multiple functions of energy transportation and system integration. The latter involves the need, not only to dispatch generation economically, but also to handle emergency flows resulting from facility outages and system disturbances which will create sudden power swings. *This requires maintaining at all times margins of transmission capability above scheduled transmission line flows so as to tolerate such power swings.*

The seven miles of 115 kv line being installed by Gainesville to interconnect its system with the backbone trans-

mission system of Florida Power Corporation do not fit into the definition of transmission capability needed for reliability "so as to tolerate such power swings." The line is a radial line to the backbone transmission system. Florida Power has excluded such radial lines in determining its backbone transmission investment (App. 192). While it is true that, in the event of forced outage of Gainesville units, all necessary power will immediately flow through the line from Florida Power's system to supply Gainesville's load, the opposite is not true because of the operative physical and electrical facts pertaining to the interconnected Florida Power system and the Gainesville system. While, if Gainesville units in excess of its own load were operating, Gainesville would have the theoretical capability of pushing small amounts of power out into the Florida Power transmission system, this fact will not even be noted by the dispatchers controlling the power supply on the Florida Power system or any other system. It would simply be recorded by meters and accounted for at the end of the accounting period.

The Commission's brief seems to imply some benefit to interconnected system reliability from the small Gainesville units which can be brought on the line within a two-hour period. The Commission has encouraged the electric utility industry in its programs which have lead to the investment of literally billions of dollars to avoid any interruptions in service, let alone two-hour interruptions of service. Gainesville may have the ability to crank up a few megawatts of capacity held in cold standby in a matter of hours after someone telephones the City. But for the Commission to indicate such ability is in some way a proportionate reimbursement for the instantaneous electric power supply continuously available to it from Florida Power's system is to make a mockery of the whole reliability program.

In the final section of its brief, the Commission seeks to clothe itself with the mantle of administrative agency expertise, asserting that the court below "failed to give appropriate deference to the Commission's judgment in this highly complex and technical field" (Commission brief, at 33-34). But what is the standard of expertise that the Commission asserts is controlling? The Commission's brief expressly states that:

> "The vast majority of interconnections between utilities are effected voluntarily. * * * In contested interconnection cases, therefore, it is appropriate that Commission decisions establishing compensation terms take into account the terms of current interconnection arrangements negotiated at arms length." (Commission brief, p. 19)

Thus, by the Commission's own criterion, it is the *industry practice* that should establish the pattern for its action. Yet, the Commission places sole reliance upon the conclusions of a Staff witness, based upon a summary review of industry practice—with the deficiencies hereinbefore noted—, in informing this Court as to industry practice.

Since informed judgment about *voluntary* industry practice is the test and the Court below directed remand, the Commission will have an opportunity to ascertain what the industry practice is in fact and to correctly apply industry practice.

CONCLUSION

The decision of the Court of Appeals should be affirmed, since the Court correctly held that the Commission had not discharged its statutory mandate to provide Florida Power with the "compensation or reimbursement reasonably due" it for its "allocated fixed cost" of providing the "extremely valuable" service sought by Gainesville and that the proceedings should be remanded to the Commission for the Commission to fix a formula for determining reasonable compensation.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA,

Petitioners,

v.

FLORIDA POWER CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Many of the arguments advanced by Florida Power and its supporting amici (hereinafter referred to as "Industry Amici") have already been covered in Gainesville's main brief. However, some additional comments thereon may be helpful to the Court in its disposition of the controversy:

1. *Court below applied the wrong standard of review.* Both Florida Power and the Industry Amici would treat the case as if it had been before the Court of Appeals for consideration *de novo* and the issue before this Court was whether the Fifth Circuit had properly sifted and evaluated the evidence. This is apparent from (1) their discussion of the evidence as if there had not been any findings by the Com-

mission based on its evaluation of that evidence, and (2) Florida Power's statement (Br., p. 15) that:

> "The Court of Appeals accurately sifted the facts of the case from the fiction and correctly decided the case on the basis of the equities of the real facts."

It is well established, however, as pointed out in Gainesville's main brief (at pp. 14-18, 23) that the evaluation of the evidence, the construction of statutory language, and the determination of the policy to be followed in order to implement the Congressional purpose, are primarily the responsibility of the regulatory agency, with the function of the courts limited to a determination whether the agency's conclusions have a warrant in the record and a reasonable basis in law.

Just as there is evidence on the record, submitted primarily by Florida Power, which Florida Power now seeks to invoke in support of its position here, there is, as shown in Gainesville's main brief (at pp. 23-37), also extensive evidence supporting the Commission's findings. In these circumstances, the settled test is whether the Commission's findings are supported by substantial evidence—not, as Florida Power and Industry Amici would have it, whether the result reached by the Court of Appeals on the basis of its independent evaluation of the evidence was justified.[1]

Furthermore, it should be pointed out that in their effort to support the result reached by the Court below on the basis of their approach, both Gainesville's opponents have grossly misstated or overstated the evidence as set forth in the record, and have indulged in inferences or conclusions

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[1] Even as an independent evaluation, the Court's opinion would be totally deficient. The Commission's decision is bottomed on the criteria of the Florida Operating Committee and practices of the Florida pool, which utilizes the policy of proportionate responsibility between large and small systems, which policy the Commission refined and adopted in its opinion. The Court below ignores this major aspect of the evidence and the manner in which it is involved in the Commission's policy formulation.

wholly at odds with the evidence and/or the Commission's own findings. Since this Court has neither the responsibility nor the expertise to sort out these invalid assertions, these actions by Gainesville's opponents serve to highlight the basic soundness of the established rule, ignored by the Court below as well as by Gainesville's opponents, requiring deference to the administrative agency with respect to such matters.

2. *Commission's order reflects the realities and complexities of multi-system interconnected operations.* The arrangements among the various members of the Florida power pool to which Gainesville may now have access by virtue of the interconnection with Florida Power directed by the Commission provide, in large part, the answers to most of the arguments made by Florida Power and the Industry Amici. As pointed out in our main brief (at pp. 4-5), the Florida pool in 1965 consisted of five major utilities in Florida, ranging in size from the small City of Orlando, with a 1965 peak customer load of 180 mw, to large Florida Power & Light Company, with a 1965 peak customer load of 2,529 mw, more than 14 times as great. Under the arrangements among these utilities, the total ready reserves of the pool amount of 1-1/2 times the capacity of the largest unit on the line; the spinning reserves equal the capacity of that unit; and the responsibilities for maintaining such reserves are pro-rated among the members on the basis of comparative customer peaks and largest units.[2]

In addition, while each member can call on the others in the event of an emergency, each utility is obligated to respond to such a call only "to the extent that, in the judgment of the Seller, the generation or purchase and delivery of such power and energy will not jeopardize service in the

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[2]The interconnected operating group has subsequently been enlarged by the addition of three municipal utilities with 1965 peaks as follows: Tallahassee, 77 mw; Lakeland, 76 mw; Ft. Pierce, 27 mw. This has been achieved through interconnection agreements (without standby charges) executed with Florida Power, Tampa Electric Company and Florida Power & Light respectively.

system of the Seller"[3] and there is no standby charge for providing such services comparable to that here sought by Florida Power. Moreover, the standard language of the agreements between pool members provides that if the flow between the systems jeopardizes the "customer service or system operation" of one of the systems, it "shall have the right to open the interconnection between the parties."[4] In other words, when the Commission, in applying its policy of proportionate responsibility, required Gainesville to maintain 15% ready reserves and 10% spinning reserves, directed the providing of emergency service on a to-the-extent-available basis, and declined to impose the standby charge sought by Florida Power, the Commission provided arrangements between Gainesville and Florida Power comparable to those among the various members of the Florida pool.

(a) Since the Commission has thus utilized the agreement and operating criteria with respect to the Florida pool in formulating the terms and conditions of the interconnection, it is apparent that, in accordance with the testimony of Gainesville's witnesses (see Gainesville's main brief at pp. 21-29),[5] Florida Power's obligation to provide emergency

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[3]The language quoted in the text appears in the contract between Florida Power and the City of Orlando (Exh. 86, Service Schedule B). The identical language also appears in the contract between Florida Power & Light and the City of Orlando (Exh. 91, Service Schedule B). Similar language also appears, for example, in Section 3;8 of the interconnection agreement between Florida Power and Tampa Electric Company (Exh. 80, Section 3.8) and Article IV, Section A, of the interconnection agreement between Florida Power & Light and the City of Jacksonville (Exh. 90, p. 8). For the convenience of the Court, these provisions and the text of Service Schedule B are reproduced in Appendices A-1, A-2 and A-3, *infra*.

[4]Exhs. 86 and 91, Section 3.3; Exh. 80, Section 3.1.

[5]Florida Power's (*e.g.*, Br., pp. 3, 7, 16) heavy emphasis on the oral argument of Gainesville's counsel before the Commission is one based on an incomplete quotation from his argument. Immediately following Florida Power's quotation, Gainesville's counsel stated (see F.P. Br. App., p 2a):

service to Gainesville or to act as the "fire department" for Gainesville (F.P. Br., pp. 7-8, 12), is intended to be no greater than its obligation to provide such services to other members of the pool. Accordingly, contrary to the argument of Florida Power (Br., pp. 7-8, 10-11, 16, 18-19, 23) and the Industry Amici (Br., pp. 5, 8), Florida Power has no obligation to provide Gainesville with instantaneous emergency service at all times as a matter either of Commission edict or of "natural" or "physical laws."

Florida Power's argument (Br., pp. 18-19) that the Commission has required the switch to be closed[6] at all times confuses the Commission's reference to *interconnection facilities* themselves (R. I. 375; see also R. I. 376) with the *usage* to which these facilities are to be put. The Commission held that it was not ordering Florida Power to provide firm service (R. I 363); it expressly left control of the "electrical flow between the system to complete * * * emergency service to * * * the system dispatchers" (R. I 359) and they in turn are supervised by "an operating subcom-

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> "We are saying if we have trouble and *you have spare capacity*, you help us, and we say in reply that we will make available to you all the *spare capacity* we have when you are in trouble."
>
> * * *
>
> "* * * The point is, it is on a *when, as and if basis,* they make it available, and [if] they don't have it, they don't have to make it available to us." (Emphasis supplied.)

This statement, together with the testimony of Gainesville's witness Benson quoted in our main brief (at p. 28), demonstrates the invalidity of the Industry Amici's sweeping assertion (Br., p. 8) that:

> "All witnesses agreed that, upon interconnection, standby capacity equal to Gainesville's entire average load would be instantaneously available at all times to Gainesville from Florida Power."

[6]When a switch is "closed," the circuit is closed and power may flow through the connection. When a switch is "open," the circuit is broken and power cannot flow.

mittee to be responsible for the day-to-day operations . . . such as operating procedures . . ." (R. I 379). These negate the existence of any Commission intent to ignore the practice of the Florida pool by requiring the interconnection to be operated "closed" at all times irrespective of the impact upon Florida Power's ability to serve its own customers. The Commission's order thus does not preclude Florida Power from opening the switch if needed to protect service to its customers.

(b) The further practice of the Florida pool of not including a standby charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected (R. I 367) also disposes of the contentions of Florida Power (Br., pp. 10, 13-14, 16-17) and Industry Amici (Br. pp. 7-9, 16-17) in support of such a charge Moreover, since the Commission did not impose any firm obligation upon Florida Power, the assessment of such a charge plainly would not be cost justified. The contrary arguments of Florida Power and of Industry Amici completely disregard the fact that the same argument were made to, and rejected by, the Commission (see R. I 366-67). There is no showing here–other than the *ipse dixit* of our opponents–that the Commission's finding is not supported by substantial evidence.[7]

[7]The Commission's Opinion on Rehearing also fully deals with the two instances in which, according to Florida Power (Br., pp. 26-27), Florida Power effected special arrangements for monetary compensation because of the lack of reciprocity in service benefits. As the Commission there points out (R. I 414-415), neither situation resembles the instant *Gainesville* case.

Likewise irrelevant are the Southeastern Power Administration (SEPA) and other cases cited at pages 31-32 of Florida Power's brief, as are the Southwestern Power Administration cases cited at pages 13-14 of the Industry Amici brief. Each of these cases involved a firm obligation to provide emergency service; accordingly, a standby charge was not only appropriate but required under standard ratemaking principles. See also Commission Brief in No. 469, at p. 23. The fact (F.P. Br., p. 32) that the SEPA obligation to provide firm standby service ran to three customers, rather than only one, does

In this regard, it is noteworthy that, in addition to requiring Gainesville to meet the reserve requirements of the Florida pool and to pay all the costs of the interconnection (R. I 363, 368; see also F. P. Br., p. 18), the Commission's order requires Gainesville to pay—in addition to an energy charge—a demand charge of 5¢ per kw per day if the emergency service is provided for more than 60 minutes (R. I 377-78). Thus, should Gainesville need emergency service from Florida Power for more than 60 minutes, Gainesville will provide Florida Power with material revenues in excess of any costs incurred for such service.[8]

(c) The disparity in the size, for example, between Florida Power & Light and Orlando, both members of the Florida pool (see *supra*, p. 3), coupled with Florida Power's recognition (Br., p. 26) that there is mutuality of benefits among the present members of the Florida pool, answers the arguments of Florida Power (Br., pp. 9-10, 13-14, 16, 21-24, 41-43) and of the Industry Amici (Br., pp. 11-12) (as well as the holding of the Fifth Circuit) that benefits from the interconnection between a large utility and a small one flow only to the latter.

These arguments also overlook the facts, as far as the Gainesville-Florida Power interconnection is concerned, as pointed out in Gainesville's main brief (at pp. 32-35), that (1) Florida Power's system includes small units as well as large ones and its customers are spread over a wide geographical area;[9] (2) while some of its small units are usually held in

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not detract from the fact that the firm obligation still required the setting aside of capacity to meet the emergency requirements of those customers.

[8]In urging that emergency service of 50 mw for one hour represents only a $200 transaction (F.P. Br., p. 12, fn. 14), Florida Power ignores the additional $2,500 per day demand charge to which it would be entitled should it provide Gainesville with 50 mw of emergency service for more than 60 minutes.

[9]The claim (F.P. Br., pp. 36-38, 41); Ind. Am. Br., pp. 6, 9-10) that the interconnection would not enhance the reliability of Florida Power's system, either generally or specifically in the Gainesville area,

reserve for peak periods (F.P. Br., p. 5), its need for outside emergency assistance is most likely to arise during such peaks; at other times, when the demands upon its system are below peak, the company usually has ample reserves of its own in the event of a forced outage of a unit on the line.

The Florida Power and Industry Amici briefs seek to convey the idea of the invulnerability of large utility systems and their lack of need for assistance from smaller systems; and the Court below apparently adopted this view—contrary to the findings and conclusions of the Commission. The facts are otherwise. This has been written large in the last year, for example, when during both summer and winter, the major interconnected east coast utilities have had insufficient capacity to discharge properly their utility obligations and have had to resort to voltage reductions (brown-outs), to selective load shedding (black-outs), and to operation with insufficient system reserves.

Consolidated Edison Company of New York is the largest electric utility in the country on the basis of peak load and has been unable to provide satisfactory service during its most recent summer and winter peaks because of outages of generating units. It has turned to every available interconnected source for assistance and has purchased capacity from small utilities in blocks of 20,000 to 50,000 kw, the amounts which Gainesville can supply most of the year into an interconnected system. During January and February, 1971, Consolidated Edison, due to the breakdown of some of its major generators, was unable to furnish full

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ignores the Commission's contrary findings (R. I 366, 414) which are supported by substantial evidence. See, *e.g.*, R. I 221-222. Similarly, the assertion of Industry Amici (Br., p. 9) that Gainesville's units are antiquated and inefficient is *not* supported by evidence cited by it. To the contrary the facts are that Gainesville's generating units are at least as good, if not better, than those of equivalent size on Florida Power's own system. See R. I 219-220, 366; see also Gainesville's main brief at p. 33, fn. 24.

service to its customers even though its load was at only 5,637 mw as compared to its summer peak of 7,266 mw (*New York Times*, Feb. 5, 1971, p. 35).[10] In order to pull through, even after voltage reductions and load shedding, Consolidated Edison purchased capacity wherever available including 40 mw from Central Hudson Gas and Electric Corporation and 25 mw from Orange and Rockland Utilities, Inc. (*Electrical Week*, Jan. 25, 1971, pp. 4-5). In early February, it was purchasing blocks of 40, 50 and 55 mw from other utilities (*New York Times*, Feb. 4, 1971, p. 61; Feb. 5, 1971, p. 35).[11]

Plainly, therefore, Gainesville's ability to make available to Florida Power up to the full 60 mw capacity of the interconnection during certain periods of the year, as found by the Commission (R. I 411-12),[12] would similarly have "meaning [and] significance" (F.P. Br., p. 23) to Florida Power should it be confronted with a comparable emergency.[13] See also, brief *amicus curiae* (pp. 16-17) filed by

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[10]For the convenience of the Court the news articles referenced herein are reproduced in Appendices B-1 through B-4, *infra*.

[11]Consolidated Edison's experience generally repeated last summer's crisis which required on one day the suspension of subway service. In searching for outside assistance "* * * the company * * * managed to get 20,000 more kilowatts from the Orange and Rockland Utilities ...." (*New York Times*, July 30, 1970, p. 22).

[12]Florida Power's claim (Br., pp. 9, 23) that Gainesville could make only about 11.5 mw available in the event of an emergency on the Florida Power system is inconsistent with the Commission's finding referred to in the text.

[13]As a corollary when a small system joins an interconnected group it is subjected to the additional risk of having its operations interrupted when a major disturbance occurs on one of the larger systems. This is illustrated by the disturbance on January 28, 1969 when the loss of the Port Everglades generating station of Florida Power & Light resulted in the loss of load by each of the other interconnected systems, including the City of Orlando which was required to shed 42 megawatts of customer load, and the City of Jacksonville, 20 megawatts (*Report on Electrical Power System Disturbances Affecting the Florida Peninsula*, January 28, 1969, FPC July 1969, p. 1).

the American Public Power Association in support of Gainesville's petition for certiorari (No. 464) for examples of how small utilities can provide benefits to larger systems.

(d) The fact that, by its policy of proportionate responsibility, the Commission was seeking to place Gainesville on a par generally with the present members of the Florida pool, also disposes of Florida Power's further argument that the loss of load probability studies of the Commission's staff were "unrealistic" because based on the assumption that Florida Power operated in isolation, whereas in fact "Florida Power has many interconnections with five other utilities" (F.P. Br., pp. 36-38). To have taken these interconnections into account in making these studies while treating Gainesville on an isolated basis would in effect have penalized Gainesville for being the last one on the interconnected system, a result which the Commission policy of proportionate responsibility was explicitly intended to avoid.

The invalidity of these arguments of Gainesville's opponents is further demonstrated by the fact noted by Commission Staff witness Braitman, on the basis of his study of the pooling agreements on file with the Commission[14] (R. II 426-429), that each member of such pools is required to have sufficient transmission capacity to traverse its service area and to deliver its generating capacity reserve obligation to the transmission grid and no attempt is made to apportion transmission investment responsibility among pool members or to require the participants to pay a portion of the annual costs of the pool's transmission grids (R. II 428-29). And since, as noted *supra*, p. 7 (see also

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[14]The Industry Amici are in error when they urge (Br., pp. 10-12, 16) that Mr. Braitman based his testimony on a review of only the 23 agreements listed in Exhibit 99. The fact is that, of the 16 multiparty pool arrangements falling within his definition of a pool and covering approximately 50% of the total installed generation in the continental United States, Mr. Braitman reviewed the 14 on file with the Commission (see R. II 426-427; Exhibit 95).

Gainesville's main brief at pp. 31-37), (1) Gainesville is to bear the entire cost of the interconnection without any cost to Florida Power (see R. I 361, 368), and (2) the interconnection will provide substantial financial and electrical benefits to Florida Power, there is no merit in the Industry Amici's claim (Br., p. 19) that "it is only right" to require Gainesville to make additional payments because it is the last one on the network.

(e) Finally, by tailoring the terms and conditions of the interconnection to conform generally to those incorporated in the voluntary agreements entered into by the various members of the Florida pool, it is obvious, despite the arguments of Florida Power (F.P. Br., pp. 24-28) and Industry Amici (Br., pp. 11-15, 18-19), that the Commission has followed the industry practice in Florida with respect to these matters. As shown, *supra,* the Commission's order herein also conforms to the practice generally throughout the industry.

In this regard, we wish to make it clear (1) that we do not concede that the industry practice is binding upon the Commission and (2) that we recognize that there are cases in which, as a part of the price of providing an interconnection, large utilities have obtained from the smaller utilities greater concessions than those which they would be entitled to under the Commission's order here under review. Not every small utility can undergo the time and expense of prolonged litigation such as Gainesville has been going through since 1965 when it filed its complaint with the Commission against Florida Power, in order to obtain its rights under the Federal Power Act. It is the Commission's responsibility to establish appropriate and reasonable terms and conditions for interconnection.

3. *Florida Power's reliance on Crisp County settlement is unjustifed.* Finally, there is no justification for Florida Power's attack (Br., p. 28, fn. 21; pp. 30-31) upon Gainesville's citation of the Commission's decision in *Crisp County Power Commission v. Georgia Power Company,* 42 FPC

1179 (1968). While the Commission's decision admittedly was designated as tentative, the Commission at the same time converted the emergency interconnection previously directed into a permanent one (see 42 FPC at 1180), and thereafter, by further order, directed a second permanent interconnection at another location in accordance with its original opinion. (37 FPC 1103; see also 42 FPC at 1181). Since, in addition, no exceptions were taken with regard to the necessity of an interconnection (see 37 FPC at 1103), it is apparent that at least the portion of the Commission's original opinion relating to the appropriateness of the interconnection (42 FPC at 1187-1190)—the portion relied upon in Gainesville's main brief (at pp. 22, 31)—was unaffected by the settlement.

Further, contrary to Florida Power's argument (Br., p. 30) the Crisp County settlement agreement does not require "Crisp County to compensate Georgia Power for standby service by means of capacity charges" *as far as emergency service is concerned.* Section 5.3 of that agreement dealing with emergency service not only provides for each party to render such service to the other "to the degree that it can do so without jeopardizing service to its own customers," but establishes only a charge for the energy provided, i.e., "at a rate of ten mills ($0.010) per kilowatt-hour***."

Florida Power apparently has confused emergency service with the purchase of capacity dealt with in Section 5.1 of the agreement. Section 4.4 of the agreement, providing for the maintenance of a generating reserve equal to 15% of peak load, also permits Crisp County to satisfy this obligation "by installed generating resources and/or *purchases from others.*" Section 5.1 provides the rate to be paid for any capacity purchased from Georgia Power Company in the event that Crisp County undertakes to discharge its reserve obligation in this manner. It is a mutual undertaking and thus also fixes the rate at which Georgia Power Company would purchase from Crisp County if the former were short on reserves.

CONCLUSION

For the foregoing reasons, as well as those set out in our main brief, this Court should set aside that portion of the judgment of the Court of Appeals which rejects the Commission's determination of the "compensation * * * reasonably due" under Section 202(b) of the Federal Power Act and direct the entry of an order affirming in full the order of the Commission.

Respectfully submitted,

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February, 1971

APPENDIX A-1

Contract for Interchange Service between Florida Power Corporation and Orlando Utilities Commission, dated September 26, 1961, Service Schedule B, pp. 1-3.

(Identical provisions appear in Service Schedule B, Contract for Interchange Service between Florida Power and Light Company and Orlando Utilities Commission)

SERVICE SCHEDULE B
EMERGENCY INTERCHANGE SERVICE

This Service Schedule B is agreed to be effective under, and a part of, the Interchange Service Contract dated Sept. 26, 1961 between the Florida Power Corporation and the Orlando Utilities Commission, hereinafter referred to as the "CONTRACT".

Section B0 - Term: The term of this Service Schedule B shall be concurrent with and identical to the term stipulated in Section 1.1 of the CONTRACT.

Section B1 - Emergency Interchange Service: Emergency Interchange Service, for the purpose of this schedule, shall mean electric power and energy supplied by one party (Seller) to the other party (Buyer) under emergency conditions during which such other party is temporarily unable to obtain its required power and energy from normally available sources. It is agreed that a condition of deficiency in power supply occasioned by shortage of system facilities, water, fuel or other supplies, which has resulted from failure of the party affected to follow recognized good engineering practice, shall not be considered an emergency condition for the purposes of this Service Schedule B.

When either party, in an emergency, shall request emergency interchange service which the other is in a position

to furnish, the Seller shall furnish the requested emergency interchange service from all available sources as needed to the extent that, in the judgment of the Seller, the generation or purchase and the delivery of such power and energy will not jeopardize service in the system of the Seller.

It is understood and agreed that the power and energy received by one party from the other under emergency conditions when the period of such receipt of such power and energy is less than sixty (60) minutes shall be classified as unintentional interchange of energy and shall be treated as set forth in Section 4.2, Article IV, of the CONTRACT, of which this Service Schedule B is a part.

If the taking hereunder of power and energy during an emergency shall be for a period of sixty (60) minutes or more, all of the power and energy taken during the emergency shall be treated as emergency interchange service, as provided for under this Service Schedule B.

It is also understood and agreed that the duration of emergency interchange service as provided for under this Service Schedule B shall not exceed 30 consecutive days for any single emergency.

Section B 2 - Payment for Emergency Interchange Service: Emergency interchange service received by either party shall, at the option of the party supplying such emergency interchange service, either be returned in kind, at times mutually agreed upon (when the value of power and energy to the party which supplied the emergency interchange service is substantially equal to the cost of the corresponding power and energy delivered), or be paid for by the Buyer at the following rate:

> An energy charge per kwhr equal to 3.0 mills plus the amount of a fuel cost adjustment determined as set out in Section A6 of Schedule A plus the amount of a transmission loss cost adjustment as set out in Section A7 of Schedule A for all kwhr delivered. The energy charge per kwhr shall be rounded out to the nearest $.00005 (5/100 of a mill).

If it becomes necessary for the Seller of emergency interchange service to purchase power and energy from OTHER SYSTEMS, in order to supply the emergency interchange service needs of the Buyer, at a cost to the Seller which Seller feels is in excess of corresponding costs on the system of the Seller, then mutually agreeable adjustments to the rate shall be determined by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule B to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST: FLORIDA POWER CORPORATION

By [Signature Illegible] Secretary — By [Signature Illegible] President

ATTEST: ORLANDO UTILITIES COMMISSION

By [Signature Illegible] Secretary — By [Signature Illegible] President

APPENDIX A-2

Interchange Agreement between Florida Power Corporation and Tampa Electric Company, dated September 1, 1957, Section 3.8, p. 6.

Section 3.8 Reciprocal Emergency Standby: In the event of an emergency arising from the failure of or defects in the lines or equipment of one of the parties, the other will, to the extent possible in its judgment consistent with its other obligations, so operate its facilities as to enable the party suffering the emergency to carry out its service obligations to the fullest extent possible. Energy received by either party shall, at the option of the party supplying such emergency energy, either be returned, in kind and at times mutually agreed upon (when the value of energy to the party which supplied the emergency energy is substantially equal to the cost of the corresponding energy delivered), or be paid for at a rate as determined in accordance with the provisions of Section 4.2 (b), (c), and (d). Emergency capacity and energy obtained from a third party for the account of either party hereto shall be paid for at a rate in accordance with the provisions of Section 4.3 hereof.

APPENDIX A-3

Agreement dated March 19, 1963 between City of Jacksonville and Florida Power and Light Company, Article IV, Section A (pertinent part).

A. *Emergency or Temporary Power*

In the event of failure of equipment on the system of either party or due to temporary loads either party shall desire power from the other party, said other party shall furnish the same within the limitations of its existing facilities, if the furnishing of such power shall not jeopardize the service and reliability of its own loads. The party requiring such power shall notify the other party of its requirements, stating the amount of power required, and the period during which such power will be needed. The party receiving such request for power shall determine if such power can be made available without jeopardizing the service of its own system and, if such power can be made available, shall advise the party making such request that the said power will be made available during the period specified in the request.

APPENDIX B-1

THE NEW YORK TIMES, JULY 30, 1970

Storms Cut Power Needs But Also Knock Out Lines

By PETER KIHSS

Showers on another 90-degree day came to the aid of New York City's beleaguered electric power supply yesterday as hot and humid weather elsewhere reduced supplies of power from out of town.

Temperatures here went into the 90's for the third consecutive day and, for the third consecutive day, Consolidated Edison Company reduced voltages to stretch its capacity. As it had the day before, the utility also appealed to the public as well as to its major customers to save on power. Upstate utilities also reduced voltages to help Consolidated Edison.

But while afternoon showers drove down temperatures 10 degrees in little more than an hour and the cooling effects held down the demand for electric power, the storms also knocked out power lines in the Bronx, Queens, Staten Island and Westchester County.

Nearly 10,000 families suffered blackouts for varying periods as a result. And flooding —apparently from hydrants opened earlier by children during sweltering heat and then swelled by the rains—knocked out subway service during the homegoing afternoon rush hours for the Pelham Bay subway line, used by 50,000 riders.

Earlier, a City Hall conference had led to revision of power conservation priorities, with Mayor Lindsay and Charles F. Luce, board chairman of Consolidated Edison, agreeing that power would be kept available to run subways for peak loads.

This followed Tuesday afternoon's disruption of subway schedules, when the Transit Authority at the utility's request moved to cut the number of afternoon rush-hour trains up to a third in a power-saving slowdown.

Members of the Mayor's Emergency Control Board said they thought automobile traffic into the city had increased yesterday morning, possibly involving commuters who feared subway delays or even breakdowns.

Witl. the Mayor appealing for reduced driving to hold down air pollution in the coincidental atmospheric crisis, Mr. Luce said Consolidated Edison would not ask for subway power savings until other steps were taken. These, he said, could include even an 8 per cent voltage reduction—a last conservation move before possible

blacking out of outlying residential areas.

Yesterday's power demand reached its hour-long high of 7,195,000 kilowatts between 11 A. M. and noon, surging briefly to 77,245,000 at 11:30 A. M. The hour-long peaks were 7,241,000 kilowatts on Monday and 7,248,000 Tuesday.

The temperature - humidity index rose to a soggy 81 at noon, one point above the mark at which the Weather Bureau considers everyone to feel uncomfortable. The temperature reached 90 at 12:30 P. M.

Minus a million-kilowatt Ravenswood, Queens, generator since July 21 and a 265,000-kilowatt Indian Point unit since last month, Consolidated Edison reported its own available power capacity at 7 A. M. was only 6,098,000 kilowatts.

The electricity it was able to import at that hour from as far away as Canada and the Tennessee Valley totaled 1,208,000 kilowatts, giving an available supply from all sources then of 7,306,000.

Mr. Luce said this was 300,000 to 500,000 kilowatts less than the company had sought from out of town, since outside utilities were also faced with increasing demands in sweltering weather along the Eastern Seaboard.

Appeals to the Public

At 10:05 A. M., Consolidated Edison reduced its voltages by 3 per cent to stretch its own capacity. It also made a public appeal for reducing nonessential uses. The 10 A. M. demand had risen to 7,230,000 kilowatts.

To assure delivery of power ordered by Consolidated Edison five upstate utilities belonging to the New York Power Poo also reduced voltages at 1(A.M. by 3 and 5 per cent in the areas east of Utica and south of Albany, out to the end of Long Island.

The drain on Consolidated Edison in New York City and Westchester went down to 7,170,000 kilowatts at 10:3(A.M., but started moving up again at 11 A.M. to 7,179,00(and at 11:30 A.M. to 7,245,000

Power Cut Off in Queens

At noon, the company reported it had managed to get 20,00(more kilowatts from the Orange and Rockland Utilities and 60,000 from the Pennsylvania-New Jersey-Maryland grid system, and to bring a Hell Gate unit that had been briefly out. The capacity rose to 7,471,000.

At 1:43 P.M., Consolidated introduced a 5 per cent reduction in voltage in four boroughs, and began a 3 per cent cut in Queens, which had escaped the morning trim.

Meanwhile, the skies darkened with oncoming rains. The metropolitan area both cooled and reeled under the impact of showers.

A Consolidated Edison report said a storm hit Laurelton, Queens, at 12:40 P.M., tearing

Daily Top Power Output By Con Ed in Heat Wave

Following are the peak power outputs handled by Consolidated Edison during the heat wave that began Friday, with maximum temperatures and temperature-humidity-index levels. The Weather Bureau says almost everybody is uncomfortable when the index reaches 80.

	Peak power load in kilowatts	Highest Temp.	Highest Temp.-Humidity Index
Friday	6,822,000	88	78
Saturday	5,266,000	89	80
Sunday	4,751,000	85	78
Monday	7,241,000	91	80
Tuesday	7,248,000	94	82
Wednesday	7,195,000	90	81

down a 4,000-volt feeder and cutting off electricity for 1,800 customers until 3:20 P.M.

The rains in Manhattan held off until 2:35 P.M., the Weather Bureau reported. A shower then poured down a third of an inch of rain by 3:40 P.M., while temperatures dropped from 87 at 2 P.M. to 77 at 4 P.M. Intermittent showers resumed later.

The power demand went down—7,203,000 kilowats at noon, 7,197,000 at 1 P.M., 7,150,000 at 2 P.M., 7,169,000 at 3 P.M., 6,994,000 at 4 P.M., 6,848,000 at 5 P.M. And at 5 P.M., Consolidated Edison announced the end of the day's voltage reduction and the need for the public conservation efforts.

Meanwhile, however, 1,000 customers in the Riverdale section of the Bronx were blacked out by storm damage to a 4,000-volt feeder line from 3:36 P.M. to 5:08 P.M.

In Staten Island, as many as 4,000 families lost power in various areas, including 1,000 from 3:19 P.M. to 5:27 P.M. in the Heartland Village in New Springville, where lightning struck a transformer and set it afire.

In Westchester, 1,100 families were blacked out in Fleetwood from 3:20 P.M. to 5:45 P.M. when the storms damaged a 13,000-volt feeder.

Phones Out in White Plains

In White Plains, 1,800 families lost electric power at 3:48 P.M. during flooding in the Mamaroneck Avenue and Main Street section. Several hundred telephones also went out of service because of wet cables.

There was flooding at the East 149th Street station of the IRT's Pelham Bay line, and power was knocked out at 3:37 P.M. Water poured in to a depth of nearly five feet to the north at Longwood Avenue, on a down grade.

While three northbound trains pulled up bumper to bumper to enable passengers to get out at the Longwood Avenue station, the Transit Authority announced the discontinuance of service betwen East 138th Street and Hunts Point at 3:40 P.M.

At 4:15 P. M., the interruption was widened to take in a 13-station stretch from 125th Street in Manhattan to East 177th Street in the Bronx. Passengers were offered free transfers to buses.

Workers restored power a number of times in the next hour or so, only to find water still pouring in despite the end of the rain. With the rush-hour trains completely disrupted, the continuing trouble was then traced to open fire hydrants.

Disruptions In Jersey

Afternoon electrical storms were reported also to have temporarily disrupted power supplies in New Jersey in Bergen, Union, Essex and Middlesex County areas served by the Public Service Electric and Gas Company.

The critical power problem faced prolongation with weather forecasts of 94-degree temperatures today and the mid-90's for tomorrow. The Weather Bureau's extended outlook for Saturday through Monday indicated temperatures continuing in the upper 80's, with occasional showers and thunderstorms.

Mayor Lindsay, at a news conference at City Hall, said:

"I join with Con Ed in asking the full cooperation of New York's citizens in reducing their consumption. Air-conditioners should be shut off.

"Put off using washers and dryers until the weekend. Shut off all nonessential electrical equipment.

"The city is doing its share. All agencies are following procedures for conservation of power. Agency chiefs may use discretion as to safety and comfort of municipal employes in determining work hours."

Cutback in New England

New England power companies reduced their voltage by 5 per cent during the day in their third consecutive day of such actions during a heat wave. The cutback was described as aimed in part at aiding the New York situation.

According to the Consolidated Edison Company, its power imports yesterday included 96,000 kilowatts from New England.

Others included 305,000 from the Ontario Hydro Electric Commission; 300,000 from the Rochester Gas and Electric Corporation; 220,000 from the New York State Electric and Gas Corporation; 200,000 from the American Electric Power system, representing a supply released by the Atomic Energy Commission; 60,000 from the Pennsylvania-New Jersey-Maryland grid, and 20,000 from Orange and Rockland Utilities.

APPENDIX B-2

THE NEW YORK TIMES, THURSDAY, FEBRUARY 4, 1971

Con Edison Cuts Voltage By 5% for 3d Straight Day

By PETER KIHSS

For the third consecutive day, the Consolidated Edison Company yesterday imposed a 5 per cent voltage reduction to stretch its power supply for extra-heavy heating demands.

But after four lingering days of below-freezing temperatures, the cold air mass began moving out to sea, sugesting an easing of problems today. Yesterday's electric supply was also aided by return of a 16,-1kilowatt Hell Gate generator, on which repairs were completed at 12:15 A.M.

For the longer range, Joseph C. Swidler, chairman of the State Public Service Commission, set up staff and utility meetings to canvass statewide means for "maximizing the power supply" and "spreading the risk" to enable the city's beleaguered utility to carry out essential maintenance on burdened major units.

The commission is also convening a conference at 1 A.M. today at its office at 199 Church Street for the state's major utilities, as well as local government officials. The conference is intended to review companies' emergency plans to start developing means for avoiding area blackouts such as occurred last summer when voltage savings still could not cope with power shortages and high demands.

Other States Affected

Yesterday was the seventh day since Jan. 18 in which statewide voltage reductions were invoked to help Consolidated Edison, which has had two major generators—about a seventh of its own capacity—shut down for more than six months.

It was also the third consecutive day of 5 per cent voltage reductions by the Pennsylvania-New Jersey-Maryland grid, which has been unable to use an 82,-kilowatt Keystone plant in Pennsylvania since a July 12 boiler explosion.

In Washington, the Federal Power Commission said the winter power crisis began Jan. 14 when the New England power pool had to make the first of its eight voltage reductions. The Commonwealth Edison Company, in Chicago, has had one such cut.

Yesterday's coldest temperature here — 8 degrees — lasted more than seven hours, starting at 1:50 A.M. At 8 A.M., Consolidated Edison cut voltage 5 per cent, and the New York Power Pool supported this with a similar reduction by five other member companies at 10 A.M. and a sixth at 4 P.M.

At 5 P.M., the start of the usual winter peak hourly load, Consolidated Edison reported 5,932,000 kilowatts available, including 854,000 brought in from outside the city—500,000

from Niagara Mohawk, 170,000 from Rochester Gas and Electric, 89,000 from the Quebec Hydroelectric Commission, 55,000 from Long Island Lighting and 40,000 from New York State Electric and Gas.

Westchester Unit

For the next hour, the load from motors on heating units, added to the normal demand for lighting with the advent of dark, averaged5,590,000 kilowatts. This indicated a reserve of not quite 6 per cent, compared with the 20 per cent utility engineers hope for in normal times.

At 6:32 P.M., the utility trimmed its voltage reduction to 3 per cent and at 7:04 P.M. reported full power restored.

The day saw two localized power troubles. InWestchester County service to 1,260 customers in Yonkers, Bronxville and Tuckahoe was knocked out about 2:30 P.M. when cables from the Dunwoodie substation were damaged by provate contractors, according to Consolidated Edison.

Lawrence Hospital in Bronxville resorted to an emergency generator. Most customers had service restored at 5:08 P.M., but the hospital and nine apartment houses were still cut off late into the evening.

In the city, Dean Mitchell I. Ginsberg of the Columbia University School of Social Work, saw the lights go off in his office at 440 West 110th Street just after 9:30 A. M. soon after, all the lights in the building, also used by the School of Arts, went out, along with the elevators and all of the typewriters, which are electric.

Consolidated Edison, which has a substation in the next building, said a contractor had knocked out a 13,000-volt feeder. Dean Ginsberg sent most of his staff home at 1 P. M. and the rest at 3 P.M. as repairs went on into the night.

The Automobile Club of New York said that because of the continuing cold weather calls for its emergency road service had tripled during the last three days to more than 14,000.

The city's Department of Rent and Housing Maintenance reported complaints of lack of heat had risen to 2,406 last Monday, 3,024 Tuesday and 3,150 yesterday for the 24-hour periods ending at 4 P.M.

APPENDIX B-3

THE NEW YORK TIMES, FRIDAY, FEBRUARY 5, 1971

Power Companies to Report on Crises

By PETER KIHSS

The Public Serivce Commission called on the state's seven major electric utility companies yesterday to report by March 1 on their plans for reducing electric loads in crises—and on the effect such moves have on consumers.

The impact of voltage cuts or actual neighborhood blackouts on food in freezers and the potential damage to equipment owned by consumers were among questions raised by Howard Read, staff counsel for the state commission, during a conference at 199 Church Street.

Commissioner William K. Jones, presiding, asked the city government to report on its plans to carry on operations of city-owned hospitals, police and fire stations and traffic and streets lights in case of power curtailments. He scheduled public hearings to start March 15.

Rising, although still below-freezing temperatures—ranging between 20 degrees at 6:30 A.M. and 27 at 2:20 P.M.—eased electric demands for heating equipment motors enough to avoid voltage reduction here and upstate yesterday for the first time since last Monday.

The beleagured Consolidated Edison Company also regained use of its 260,000-kilowatt Arthur Kill generator, after having been shut for repairs since 9:47 P.M. Monday.

As a result, Consolidated Edison had 5,863,000 kilowatts available to meet its winter peak-hour demand, starting at 5 P.M. This capacity included purchases of 440,000 from Niagara Mohawk, 90,000 from Rochester Gas & Electric, and 89,000 from the Quebec and 50,000 from the Ontario hydro-electric commissions.

The hour-long average used from 5 to 6 P.M. was reported as 5,834,000 kilowatts, indicating a reserve of only 0.5 per cent. This compared with peak gross loads of 5,685,000 last Monday, a zero-reserve hour; 5,597,000 Tuesday and 5,590,000 Wednesaay. All three were days when 5 per cent voltage reductions were estimated to be saving 207,000 kilowatts and major users were holding down as well.

Yesterday the company said these peak-use figures were gross demands, including its own internal use—197,000 kilowatts during the peak hour. The net demand was described as 5,637,000, comparing with a recordwinter peak of 5,869,000 last Dec. 22, also a net figure. The summer peak here was 7,266,000 on July 17, 1969.

At the Public Service Commission conference, the utilities were asked to describe power cuts and effects starting since Jan. 1, 1970, in efforts to stretch tight power supplies. They were also asked to report advantages and disadvantages of particular methods, how priorities were established and the result of appeals to the public.

Eugene Margolis, assistant corporation counsel, representing New York City, proposed an inquiry on whether the companies were purchasing all power available before they curtailed service.

Utility officials have contended that voltage reductions have no noticeable effect until they reach 8 per cent, when lights dim. Health officials have indicated food in freezers remains safe for some hours after power has been shut down.

Appliances and other electric equipment are supposed to be built with tolerances for as much as 10 per cent in voltage variations. Public Service Commission officials say their voltage meters, put on lines when complaints are made, tend to show variations of generally not more than 2 to 4 points.

CON ED AGAIN ON BRINK; ESTIMATED RESERVES CALLED 'PAPER FIGURES'

The bone-chilling temperatures that swept the Northeast early last week put electric utilities in New York and New England in a precarious power-supply situation with Con Edison just one step short of a public appeal for all customers to curtail power use. High usage resulting from the cold weather, coming on top of a raft of forced outages of generating equipment (3,700 Mw on the Con Ed system alone), whittled estimated generating reserves to the vanishing point, forcing the New York and New England power pools to reduce voltage 5% to hold their systems together. New York PSC chairman Joseph Swidler asserted that the estimated reserves, which New York utilities had forecast to be 33.2% at winter peak, "are unrealistic, soft figures" (a PSC staffer termed them "paper figures"), but refrained from other observations "until we get a little deeper into the planning of the electric utilities." The pool's net capability is 21,700 Mw.

Knowledgeable utility officials around the country were surprised that the summer-peaking pool could be caught short in the middle of winter. Its Monday peak demand was only 15,495 Mw -- about 1,200 Mw less than it had experienced just a month previously (Dec. 22) and 1,500 Mw less than it had weathered last July 22. What is more, a mere 200 Mw was down for scheduled maintenance at the beginning of last week.

New York Power Pool officials knew on the morning of Monday, Jan. 18, that they faced another tight one with upstate temperatures below zero, New York City temperatures in the low teens, and more than 25% (5,500 Mw) of the state's capacity on forced outage. Con Ed, which has about 40% of the generating capacity in the state, was the focus of the trouble with its 1,000-Mw Ravenswood-3 (Big Allis) and the 256-Mw Indian Point nuclear plant still undergoing long-term repairs and some 2,450 Mw down or de-rated in other units. The rising loads and the mid-day loss of Homer City-1 (in which the New York pool has a 300-Mw share) moved pool officials to sound an alert for a 5% voltage reduction at 1 p.m. With loads still rising, the reduction was put into effect at 2:30 p.m. and Con Ed began calling on its large customers to reduce non-essential uses of power about 3 p.m.

With the help of 420-Mw of capacity shipped in from the west (40 Mw from Cleveland Electric Illuminating, 300 Mw from the Allegheny Power System, and 80 Mw from Ohio Electric) the New York pool was able to pull through. But all of the pool resources were strained to keep the Con Ed system on line. At the height of the crisis (between 4 and 5 p.m.), Con Ed was drawing nearly 700 Mw from its neighbors in the pool (400 Mw from Long Island Lighting, 140 from Rochester Gas & Electric, 90 from Orange & Rockland, 40 from Central Hudson, and 25 from New York State Gas & Electric) in addition to the 420 Mw coming from the west. The voltage reduction and Con Ed's appeal for curtailment were cancelled at 7 p.m. Monday.

When Con Ed hit its peak of the afternoon, 5,609 Mw, with the voltage reduction (estimated at 270 Mw) and voluntary curtailment by large customers in effect, the capacity available from its own system was a bare 5,035 Mw. Purchases of 1,120 Mw helped meet the reduced load and gave it a 510 Mw contingency reserve. Con Ed and the other New York companies were able to weather another two days of the cold spell, which began breaking Wednesday night, without resort to a voltage reduction as some smaller units were restored to service and additional power became available from the west and New England . However, Con Ed and two other downstate New York utilities along with the New England pool were forced to again trim voltage 5% from 4 to 6 p.m. Thurs-

HOW VALID ARE RESERVE ESTIMATES?

Last week's crisis in New York again emphasizes the weakness of estimated reserve figures, whether calculated by the utilities or government agencies. The utilities in New York had estimated a 33.2% reserve for this winter's peak. The Federal Power Commission had calculated a 32.5% reserve for the New York pool. It is chairman Swidler's contention that the PSC is in no position to evaluate an estimated reserve until his staff can get more involved in the planning of the pool, but he says "the terrible de-rating and outage situation on the Con Ed system casts a large question over any reserve estimates presently available."

New York power pool officials freely acknowledge that they are re-evaluating their reserve estimates. Says one top Con Ed official who is also a pool official, "I think every power pool in the country is reviewing its reserve estimates." He says the "unexpectedly low availability of new large units is certainly trimming our expected reserve margins." "At the other end of the scale," he continues, "some of the old units still counted as 'existing capacity' are actually retiring themselves." The unavailability of installed capacity, largely because of forced outages, is bringing about a widespread re-evaluation of estimated power reserves. Besides the New York pool and the PSC, other agencies reviewing their reserve estimates are PJM, FPC, and the National Electric Reliability Council. "These estimates are a big headache," commented one industry official, "and we are getting to the point where we don't believe anybody's figures."

OVERSIZE PAGE SEE NEXT FRAME
FOR REMAINDER OF PAGE

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Neighboring pools were also running tight when the New York pool pleaded for help on Monday morning. The New England pool, with about 2,000 Mw (of its 13,700 Mw of installed capacity) down because of forced outages or scheduled maintenance and loads inching up near its December peak, joined in the 5% voltage reduction but had no extra capacity to ship south. At 4 p.m. it dropped United Illuminating's Bridgeport-2 on a boiler tube leak. Commented a pool official: "We probably would have had to go to a voltage reduction anyway after the Bridgeport failure, even if we hadn't been trying to assist the New York pool."

To the west, the Pennsylvania-New Jersey-Maryland Interconnection was a little better off, though it had some 13% of its 29,152 Mw of installed capacity down on forced outages and another 10% down for scheduled maintenance, leaving just enough reserve to take care of its own systems. However, it was able to provide transmission capacity to move the 420 Mw from the west to the New York systems.

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GAINESVILLE UTILITIES DEPARTMENT ET AL. *v.* FLORIDA POWER CORP.*

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 464. Argued February 24, 1971—Decided May 24, 1971

Pursuant to § 202 (b) of the Federal Power Act, the Federal Power Commission (FPC) is empowered to direct one electric utility to interconnect its electric system with another utility and it "may prescribe the terms and conditions of the arrangement to be made . . . including the apportionment of the cost between them and the compensation or reimbursement reasonably due to any of them." After hearings and staff studies the FPC found that an interconnection between Gainesville, a small municipally-owned utility, and respondent, a major investor-owned electric utility, would be in the public interest, would not unduly burden respondent, and would benefit both parties. The FPC ordered the interconnection, requiring Gainesville to pay the entire $3 million cost thereof and to maintain certain generating capacity. In the light of these circumstances the FPC imposed no standby charge on Gainesville. The Court of Appeals denied enforcement of the order, agreeing with respondent's claim that the omission of an annual $150,000 payment to it by petitioner for the backup service provided by the interconnection resulted in a failure to satisfy the statutory mandate of "reimbursement reasonably due" respondent because respondent would obtain no benefit from the interconnection. Section 313 (b) of the Act provides that "findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." *Held:* Since there was substantial evidence

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*Together with No. 469, *Federal Power Commission* v. *Florida Power Corp.*, also on certiorari to the same court.

Syllabus

to support the FPC's findin - that benefits will accrue to respondent from the interconnection, th Court of Appeals erred in not deferring to the FPC's expert judgment. Pp. 6–14.

425 F. 2d 1196, reversed and remanded.

BRENNAN, J., delivered the opinio of the Court, in which all members joined except BLACKMUN, J., who took no part in the decision of the cases.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

NOS. 464 AND 469.—OCTOBER TERM, 1970

Gainesville Utilities Department et al., Petitioners,
464 v.
Florida Power Corporation.

Federal Power Commission, Petitioner,
469 v.
Florida Power Corporation.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 24, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Under the Federal Power Act, an order of the Federal Power Commission that directs one electric utility "to establish physical connection of its transmission facilities with the facilities of" another utility "may prescribe the terms and conditions of the arrangement to be made . . . including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them." Federal Power Act § 202 (b), 16 U. S. C. § 824a (b).[1] The Commission order which directed re-

[1] Section 202 (b) of the Federal Power Act, 16 U. S. C. § 824a (b), provides:

"(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical

spondent Florida Power Corporation to interconnect its electric system with that of petitioner Gainesville Utilities Department did not contain a term or condition sought by respondent requiring petitioner to pay an annual standby charge of approximately $150,000 for the emergency or backup service provided by the interconnection, 40 F. P. C. 1227 (1968); 41 F. P. C. 4 (1969). The Court of Appeals for the Fifth Circuit held that, because of the omission of such a term or condition, "the terms of the interconnection do not adequately satisfy the statutory requirements because they do not provide Florida Power with the 'reimbursement reasonably due' it. . . . Thus we deny enforcement of this order insofar as no provision for the reasonable compensation of Florida Power is made." 425 F. 2d 1196, 1203 (1970) (footnote omitted). We granted the petition for certiorari of Gainesville Utilities Department in No. 464, and of the Federal Power Commission in No. 469, 400 U. S. 877 (1970). We reverse the judgment of the Court of Appeals insofar as it denied enforcement of the Commission's order and remand for the entry of a new judgment enforcing the Commission's order in its entirety.

I

The demand upon an electric utility for electric power fluctuates significantly from hour to hour, day to day, and season to season. For this reason, generating facili-

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connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

ties cannot be maintained on the basis of a constant demand. Rather, the utility's generating capability must be geared to the utility's peak load of demand, and also take into account the fact that generating equipment must occasionally be out of service for overhaul, or because of breakdowns. In consequence, the utility builds certain "reserves" of generating capacity in excess of peak load requirements into its system.[2] The practice of a utility which relies completely on its own generating resources (an "isolated" system in industry jargon) is to maintain equipment capable of producing its peak load requirements plus equipment which produces a "reserve" capacity equal to the capacity of its largest generating unit.

The major importance of an interconnection is that it reduces the need for the "isolated" utility to build and

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[2] The industry distinguishes between various types of "reserve" requirements. Since time is required to start up equipment that is not operating, a certain amount of equipment must be maintained in such a state that it can begin generating power immediately. The industry calls these instantaneous or "spinning" reserves, and they must be available to meet load variations and breakdowns of equipment as they occur. A utility must always maintain "spinning" reserve equal to the size of the largest generator currently in service producing power, in order to protect against a breakdown of that unit. As "spinning" reserves are called upon a utility must start up more equipment in order to maintain "spinning" reserves at an adequate level. These reserves are called "quick-start" or "ready" reserves and must be able to be called upon on short-notice—usually 10 minutes or less. Both spinning and quick-start reserves are collectively referred to as "operating" reserves, in contrast to "installed" reserves. Installed reserves refers to the remaining generating capacity of a utility, those generators that are not ready to be operated, or in operation. Accordingly, the expense associated with "reserve" requirements includes both capital expense—building the necessary "installed" reserve generating capacity—and operating expense—running the necessary "spinning" reserves and maintaining the readiness of "quick-start" reserves. In general, this opinion will not differentiate between the different reserve requirements.

maintain "reserve" generating capacity.[3] An interconnection is simply a transmission line connecting two utilities. Electric power may move freely through the line up to the line's capacity. Ordinarily, however, the energy generated by each system is sufficient to supply the requirements of the system's customers and no substantial amount of power flows through the interconnection. It is only at the times when one of the connected utilities is unable for some reason to produce sufficient power to meet its customers' needs that the defficiency may be supplied by power which automatically flows through the interconnection from the other utility. To the extent that

[3] The reason that interconnections lower reserve requirements is well-illustrated by a hypothetical discussed in the Commission's brief, at 15–16.

"Assume that four electric systems operate in isolation and that each has an annual peak load of 500 mw served by several generating units the largest of which is 200 mw. At a minimum, each system would have to provide 700 mw of installed generating capacity (500 mw to cover the annual peak load plus 200 mw of installed reserves equal to the largest unit). If we assume further that each system operates its 200 mw unit near capacity throughout the year, spinning reserves equal to the output of that unit would constantly be required. If the four systems are to be interconnected pursuant to the Florida Operating Committee formula, total generating capacity need not exceed 2300 mw (total annual peak load—if all peaks occur during the same period—plus operating reserves of 300 mw, i.e., 1½ times the largest generating unit). This 2300 mw capacity requirement would be met by requiring each system to maintain generating capacity equal to 115 percent of its annual peak load. Each system would thus have to maintain only 575 mw of generating capacity—125 mw less than would be required if operating in isolation. The interconnected system as a whole would require the constant maintenance of 200 mw of spinning reserves and 100 mw of quick-start reserves; each system's pro rata share of operating reserves would amount to only 75 mw. Thus, interconnection of the four systems would result in substantial capital savings by reducing installed generating capacity requirements and substantial operating savings by reducing operating reserve requirements." (Footnote omitted.)

the utility may rely upon the interconnection to supply this deficiency, the utility is freed of the necessity of constructing and maintaining its own equipment for the purpose.

The Gainesville Utilities Department is a municipally owned and operated electric utility serving approximately 17,000 customers in a 22-square-mile area covering the city of Gainesville and adjacent portions of Alachua County, Florida. In 1965, Gainesville's "isolated" system had a total generating capability of 108.4 megawatts (mw) while its peak load was 51.1 mw. Gainesville's generating capacity in 1965 consisted of five steam electric generating units ranging from five to 50 mw. Thus Gainesville's generating capacity of 108.4 mw gave it a reserve capacity of 57.3 mw over its annual peak load of 51.1 mw—a reserve adequate to cover the shut down of the system's largest generating unit of 50 mw. Gainesville's peak load was projected to be doubled to 102 mw by 1970. Its 1970 capacity, however, was projected to increase to only 138.4 mw through the addition in 1968 of two 15 mw gas turbine generators. Thus an interconnection was necessary if Gainesville was to avoid having to make a still greater investment in generating equipment.

Florida Power Corporation operates a major electric generation, transmission, and distribution system serving 370,000 retail customers in a 20,600 square-mile system serving 32 counties in central and northwest Florida, including Alachua County. It also supplies power at wholesale to 12 municipal distribution systems and 9 REA cooperatives. In 1966, Florida Power had an aggregate generating capability of 1595 mw and experienced a peak load of 1232 mw. At the time of the hearing before the Commission, Florida Power was building a 525 mw generating unit to begin service in December 1969, and anticipated a 1970 generating capability of 2114 mw and

a 1970 peak load of 1826 mw. Thus the anticipated excess of capacity over peak load, 288 mw, is less than the size of its largest generating unit, 525 mw. However, the deficiency is provided for by interconnections which Florida Power has with four other Florida utilities. See n. 3, *supra*. All five of these utilities constitute the Florida Operating Committee, which, though informal in nature, serves as a medium through which the technical operations of its members are coordinated. As a result of the sharing of reserves made possible by the interconnection of the Committee's members, each utility is able to reduce the reserve generating capacity that would be required if it were electrically isolated. Specifically, each of the Florida operating Committee members maintains generating capacity equal to 115% of its annual peak load.

For several years prior to 1965, Gainesville sought to negotiate an "interconnection" with Florida Power and with another member of the Florida Operating Committee, Florida Power & Light. When those efforts failed, Gainesville, in 1965, filed an application with the Commission seeking an order under § 202 (b) directing Florida Power to interconnect with Gainesville.[4]

II

Section 202 (b) authorizes the Federal Power Commission to order a utility to interconnect with another, and "to prescribe the terms and conditions of the arrangement . . .", if the Commission "finds such action necessary or appropriate in the public interest," and "if the Commission finds that no undue burden will be

[4] At the same time, Gainesville also filed a complaint with the Commission charging Florida Power with unlawful discrimination under §§ 205 and 206 of the Federal Power Act, 16 U. S. C. § 824d, for failure to agree to an interconnection. The Commission dismissed this complaint as moot when the interconnection was ordered.

placed upon such public utility thereby." The proviso to the section makes explicit that the Commission has no authority in ordering an interconnection "to compel the enlargement of generating facilities . . . [or] to compel such public utility to sell or exchange energy when to do so would impair its ability to render service to its customers." 16 U. S. C. § 824a (b).

Following extensive hearings, an examiner made findings that the proposed interconnection would be in the public interest and that it would not place an undue burden on Florida Power. The Commission affirmed the findings and further found that the interconnection would neither compel Florida Power to enlarge its generating facilities nor impair its ability to serve its customers. The Commission ordered the interconnection but on conditions (1) that Gainesville pay the entire $3 million cost of the interconnection, and (2) that Gainesville maintain generating capacity resources at least equal to 115% of its peak load—the requirement imposed by the Florida Operating Committee on all its members. The order also fixed the rates of compensation to be paid for actual energy transfers across the interconnection.

Respondent, Florida Power, does not challenge the Commission's order except in its omission of a term or condition that Gainesville pay approximately $150,000 annually as "compensation or reimbursement reasonably due" respondent for the back-up service effected by the interconnection. Respondent contended that this charge, computed on the basis of Gainesville's largest generator, was justified because only Gainesville could gain from the interconnection since the reserve made available to respondent from Gainesville was too small to be of any realistic value to respondent's massive power system. The Commission rejected the contention. It noted that respondent had not included a comparable charge in any of the contracts for interconnection voluntarily negotiated

with members of the Florida Operating Committee. The Commission also emphasized that "the apportionment of cost" factor had been satisfied by requiring Gainesville to bear the full cost of making the interconnection. Primarily, however, the Commission rested its rejection upon two grounds. First, the Commission stated its view that, in applying the statutory provision, the appropriate analysis should focus not upon the respective gains to be realized by the parties from the interconnection but upon the sharing of responsibilities by the interconnected operations:

> "[T]hat sharing must be based upon, and follow, the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive. Benefits received in any given situation may approximate these responsibilities or they may not. In the course of negotiation of voluntary pooling arrangements, benefits received may, on occasion, serve to offset burdens imposed in determining the appropriate charge for particular services rendered or facilities supplied. But where as here, the cost of providing such services and facilities and the appropriate charges therefor have equitably been determined after a careful analysis and apportionment of the burdens and responsibilities of each party, there is no basis for any further consideration of relative benefits . . . ." 40 F. P. C., at 1237.

Second, the Commission found that even if the interconnection were evaluated on the basis of relative benefits, "this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits, and corporate financial savings." *Id.*, at 1238. In its original opinion and in its opinion denying rehear-

ing, the Commission specified the benefits that it found Florida Power would gain from the interconnection, as set out in the margin.[5] On the basis of these findings, the

[5] "For the Company, the interconnection will add an additional energy source to its network in a geographic area where the Company has a substantial load (customer demands), but does not have generating plants of its own. Because of that, the expected benefit to Florida Power may be very substantial since the [Gainesville] governors have a faster rate of response setting than Florida Power's. Also of great importance to Florida Power is the improved system reliability which the Company will gain through the proposed intertie. That is shown in studies submitted by staff from engineering analyses of loss of load probabilities. They establish that the interconnection will have the effect of improving the reliability of Florida Power's system." 40 F. P. C., at 1238.

"Throughout its application [for rehearing], the Corporation emphasizes the contention that Gainesville will not be able to render any service of significant value to Florida Power. Upon consideration of this argument we find that Florida Power has greatly underestimated Gainesville's capacity to be of service to the Corporation. Because of its electrical isolation, Gainesville has maintained a very large reserve capacity in relationship to its peak load. In 1965 its peak load was 51.1 mw, and its reserve capacity was 57.3 mw or 112.1 percent of peak demand. Although the purpose of this interconnection proceeding is to enable Gainesville to lessen its need for self-reliance, Gainesville's reserve capacity will continue to be large even after interconnection. The staff's witness had testified that during the ten year period 1970–1979, Gainesville's average minimum reserves at the time of Florida Power's annual peak hour demand will be 43 percent. According to staff's computations, Gainesville will be able to deliver, if there will be sufficient interconnection transmission facilities, anywhere from 60 mw to 100 mw to Florida Power during certain periods in January, April, and September 1970. This prediction that Gainesville will be able to furnish capacity of this magnitude to Florida Power plainly refutes Florida Power's assertion that the interconnection will prove to be a one-way street with all the benefits flowing from the Corporation to the City. The Commission is satisfied that the interconnection will permit a reciprocal exchange of benefits to the mutual advantage of both systems. . . .

"Staff's studies of Gainesville's future reserve capacity also serve to refute Florida Power's allegation that there is 'no scintilla of evi-

Commission concluded that no standby charge should be imposed on either party to the interconnection. Thus, under the terms of the Commission's final order, each party pays only for the power actually received from the other, and each party is obligated to deliver power only on an "as available" basis. 40 F. P. C., at 1236 n. 4, 1245.

The Court of Appeals' denial of enforcement of the Commission's order insofar as no provision was made "for the reasonable compensation of Florida Power" rested on the Court's conclusion that the Commission's "proportionate burden" analysis was "largely illusory:"

> "The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substan-

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dence' to support the Commission's finding that Gainesville will become an additional interchange power source on Florida Power's network after the interconnection is consummated. Similarly, staff's studies rebut the Corporation's assertions regarding the insignificance of Gainesville's anticipated capacity contributions." 41 F. P. C., at 5–6 (opinion denying rehearing).

"Florida Power asserts that the Commission erred in finding that the interconnection will add an additional energy source in an area where Florida [Power] has no generating plant. The Corporation states that it now has three energy sources to supply its load in the Gainesville area and that it does not need a fourth. Florida Power's Form 12 for 1965 shows that the Corporation's Suwanee Plant is the closest generating source to its Gainesville load center. This plant is more than 75 transmission line miles away from this load center. The next closest plant is the Inglis Station which is more than 80 transmission line miles away. Florida Power's three energy sources are connected to the Gainesville load area by 69 kv transmission lines. According to staff, two of these lines serve other loads and could be vulnerable to outages. We agree with staff's position that the connection with Gainesville's generating resources would upgrade service reliability to the Corporation's customers in the Gainesville area." 41 F. P. C., at 7.

tial responsibilities. Such imaginary equity is not reasonable compensation." 425 F. 2d, at 1203.

The validity of this conclusion, however, depends upon whether the court correctly read the record as showing that Florida Power "receives no benefit" and that Gainesville incurs "no real obligations."[6] The Commission's findings are squarely contrary.

Although the Commission did argue that the benefits to be derived from the interconnection by each party were irrelevant to the proper decision of the case, nonetheless, in view of respondent's strenuous protest, the Commission went on to bring its expertise and judgment to bear upon the benefits and burdens and made findings identifying several specific benefits that would accrue to Florida Power from the interconnection. See n. 5, *supra*. Merely because the Commission argued that on its view of the legal question involved, findings of benefits were unnecessary to its decision does not render them any the less findings on the question of benefits. A reviewing court should hardly complain because an agency provides more analysis than it feels is absolutely necessary.[7]

Section 313 (b) of the Federal Power Act, 16 U. S. C. § 825*l* (b), provides that "[t]he finding of the Commission as to the facts, if supported by substantial evidence,

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[6] Respondent Florida Power concedes that the Commission's proportionate burden analysis is appropriate when the interconnected systems are approximately equal in size and when the interconnection does benefit both parties to an interconnection. Brief for Florida Power Corporation, 21.

[7] We, therefore, reject the Court of Appeals' conclusion that, because they were stated in the alternative, these were "not fact-findings protected by the umbrella of the substantial evidence test." 425 F. 2d, at 1203 n. 20. This is not a case where the Commission did not follow a procedure that it might have followed, see *SEC* v. *Chenery Corp.*, 318 U. S. 80 (1943), or failed to make findings or evaluate considerations relevant to its determination, see *Schaffer Transportation Co.* v. *United States*, 355 U. S. 83 (1957).

shall be conclusive." See *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474 (1951). Among the specific benefits the Commission found would accrue to Florida Power were increased reliability of Florida Power's service to customers in the Gainesville area, the availability of 60 to 100 mw of reserve capacity during certain periods of the year, and savings from coordinated planning to achieve use at all times of the most efficient generating equipment in both systems. The Commission's findings were aided by specific studies, made by the Commission's staff, and placed in the record. Insofar as the Court of Appeals' opinion implies that there was not substantial evidence to support a finding of *some* benefits, it is clearly wrong. And insofar as the court's opinion implies that the responsibilities assumed by Gainesville in combination with the benefits found to accrue to Florida Power were insufficient to constitute "compensation . . . reasonably due," the Court of Appeals overstepped the role of the judiciary. Congress ordained that that determination should be made, in the first instance, by the Commission, and on the record made in this case, the Court of Appeals erred in not deferring to the Commission's expert judgment.

Florida Power's emphasis on Gainesville's small size occurs only when discussing Gainesville's ability to provide Florida Power with energy. But Gainesville's small size has relevance in terms of the amount of power it may, even in emergencies, require from Florida Power. What Florida Power chooses to emphasize is that the availability of a certain amount of power flowing from it to Gainesville is relatively more valuable to Gainesville's small system than the availability of the same amount of power flowing from Gainesville to Florida Power. It is certainly true that the same service or commodity may be more valuable to some customers than to others, in terms of the price they are willing to pay for it. An

airplane seat may bring greater profit to a passenger flying to California to close a million-dollar business deal than to one flying west for a vacation; as a consequence, the former might be willing to pay more for his seat than the latter. But focus on the willingness or ability of the purchaser to pay for a service is the concern of the monopolist, not of a governmental agency charged both with assuring the industry a fair return and with assuring the public reliable and efficient service, at a reasonable price.

Our guidepost here is the Act's explicit commitment of the judgment as to what compensation is reasonably due, in this highly technical field, to the Commission. Cf. *Permian Basin Area Rate Cases*, 390 U. S. 747, 767 (1968). In the exercise of this judgment, the Commission's order placed on Gainesville the entire $3 million cost of constructing the interconnection. Thus the benefits that the Commission found that Florida Power will receive from the interconnection will come without any capital investment on its part. In addition, the Commission required Gainesville to maintain generating capacity equal to at least 115% of its annual peak load and to maintain operating reserves in accordance with the procedures established by the Florida Operating Committee. In light of these circumstances, the Commission concluded on the basis of its proportionate burden analysis that Gainesville should not pay a standby charge for the availability of emergency service, which is provided only on an "as available" basis. It simply required Gainesville to pay for energy actually received. On this record, we cannot say that the Commission has failed to discharge either its responsibility to assure Florida Power of "reasonable compensation" or its responsibility to the public to assure reliable efficient electric service.

Since we conclude that substantial evidence supports the findings of the Commission that benefits will accrue

to Florida Power from the interconnection, we have no occasion to decide whether the Commission in ordering the interconnection of two electric power companies, may properly condition the interconnection, when one party receives no benefits, upon compensation terms based on the relative burdens that each places on the interconnected network. Decision of that question must await a case which presents it.

Reversed and remanded.

MR. JUSTICE BLACKMUN took no part in the decision of these cases.